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Supreme Court of the United States

[redacted]

No. 65

VETERANS OF THE
ABRAHAM LINCOLN BRIGADE, PETITIONER,

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED MAY 5, 1964

CERTIORARI GRANTED JUNE 22, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

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BEFORE THE
SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 108-53

HERBERT BROWNELL, JR., Attorney General of the United States, Petitioner,

v.

VETERANS OF THE ABRAHAM LINCOLN BRIGADE, Respondent.

RECOMMENDED DECISION BY KATHRYN MCHALE, BOARD MEMBER

Issued May 18, 1955

Robert H. Purl and Thomas A. Daly for the Petitioner.

Homer C. Clay for the Respondent.

[fol. 20]

FORMATION

At an enlarged National Committee meeting in 1936, with Budenz present, Earl Browder stated that the Communist International had ordered the Communist parties throughout the world to furnish soldiers for an International Brigade in Spain; that the Communist Party of the United States had been assigned a quota of men as had other Communist parties throughout the world; and that it must do its part in response to this order. Browder stated that A. W. Mills, also known as Milgrom (a high Party functionary and a member of the Politburo) would be put in charge of the political preparation of those going to Spain. The Party was also to seek to bring in left-wing Socialists and other groups, but the battalion to be formed was to be overwhelmingly Communist in personnel.

Based upon knowledge gained from his official positions with the Party, Lautner testified that the ALB was a military organization, a component part of the International Brigades in Spain, which were organized by the Comintern

NOTE: Internal page references (except for material omitted) are to the side folios in brackets.

and headed by Andre Marty, a member of the Communist International. Formation of the ALB was discussed at National Committee meetings when he was present and questions concerning its organization, financing, recruitment of members and other support were discussed in Central Committee plenums. Reports made by Browder and Minor brought these matters before the plenums for consideration. In discussions of these, Lautner, Earl Browder, Robert Minor, Roy Hudson, James W. Ford, Gene Dennis, John Williamson, Gil Green, and others participated. The Central Committee was comprised of the following, among others: Browder, then General Secretary of the Party; William Z. Foster, National Chairman; Jack Stachel, Executive Secretary; Roy Hudson, a Party trade union specialist; Williamson, District Organizer in Ohio; Childs, District Organizer in Illinois.

Foster and Browder, in their reports to the Party's National Committee, constantly reiterated that the ALB was a Communist Party responsibility, and that the overwhelming majority of its members were Communists. District Organizers in the Party were ordered, so far as possible, to furnish a certain number of men to go to Spain. Budenz was present in the Maritime Section of the Party when efforts were made to recruit persons for Spain with pressure brought to bear upon Party members to respond by stressing that this was an obligation placed upon the Party. Budenz explains that if a member doesn't respond to a Party obligation when it appears that he is able to do so, his standing among his comrades is measurably less. Recruiting for the war in Spain was a leading point of discussion constantly in National Committee and other meetings of the Party.

[fol. 21] David Leeds, in charge of finances for the Party's New York State Committee, advised Budenz that he was going abroad in order to handle the organization and finances of the men going to Spain, which operation would be done from France.* In 1936, Steve Nelson, Section

* Comrade Chester, also known as Zukor or Schuster, took over Leeds' financial work in the Party on the fifth floor of Communist Party Headquarters.

Organizer for the Party in eastern Pennsylvania, told Budenz that he was going to Spain, his mission being a Party assignment to work with the Soviet secret police in Spain, among other things.

Robert Minor, a very important member of the Politburo, and subsequently Assistant Secretary of the Communist Party, went to Spain during the war for the purpose of strengthening the morale and Communist consciousness of the men fighting there.

John Little, a Young Communist League and Party functionary, went to Spain to facilitate the organization of the men there and to advance the Communist interests in Spain (see Pet. Ex. 12, *infra*, showing Little's report upon returning).

Throughout 1937, and after his own trip to Spain in early 1938, made to investigate the Communist consciousness of the men in the Abraham Lincoln Battalion, Browder explained to Budenz many times that the International Brigades were composed of Communists of all countries and that the Party here had a special obligation to the Communist International to send a large United States contingent to Spain.

In addition to this evidence of high Party functionaries concerning the formation of the ALB by the Communist Party at the direction of the Communist International, the Petitioner presented witnesses Gladnick, Harris, Hecht, Herrick, Horan, and Maken, who went to Spain through the Communist Party and who, except for Harris, were Party members at the time.

Herrick and Gladnick were among the first contingent to go to Spain, leaving the United States on the *Normandie* on December 26, 1936. As a Young Communist League member, Herrick, having indicated a desire to fight in Spain, was taken to a Party headquarters in lower Manhattan and interviewed, and shortly thereafter in Party Headquarters in 13th Street, was again interviewed by one Bidarian, a Section Organizer, Fred Brown (also known as Alpi and Ferrucci Marini), a Comintern representative, Paul Crosby, and Johnson. Bidarian vouched for Herrick's Party reliability to Brown. Thereafter, he reported to a guarded hall in lower Manhattan for training and drilling

[fol. 22] with a number of other men. They were told to maintain the strictest secrecy concerning their training and departure for Spain. Subsequently, at such meetings in December 1936, the group was addressed by Brown, Bidarian, and Ralph Bates. Bates, an English Communist who had fought in Spain, spoke concerning the role of the Soviet Union in Spain, indicating that they were going to fight in Spain for the policies of the Party and the Communist International.*

Most of this group belonged to the CPUSA which at this particular time was having discussions and issuing literature on Spain; and they were thus made familiar with the role of the Communist Party in Spain and the struggle going on there. Herrick can recall only one member of this group who was not a Party member and only one other such person in Spain. Gladnick can recall only two persons in Spain from the New York waterfront who were not Party members. Arrangements for Herrick's trip to Spain were made by Intourist, a Soviet Union tourist agency.

Prior to leaving for Spain, Earl Browder addressed the group, telling them that they were going to Spain to fight against fascism and to show "our international solidarity." Browder's statement concerning international solidarity meant to Herrick as a member of the Young Communist League, "working class" solidarity, or solidarity of all the "working classes" throughout the world.** Browder also spoke to the effect that the men were going to be forged in the fire of combat and that upon their return to the United States they would be in the forefront of the struggle for American communism; that they would no longer be theoretical Communists but true fighters. Fred Brown together with Allan Johnson at a meeting held in New York, appointed Jim Harris military commander of this group

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* Budenz stresses in his testimony that the Party was not fighting fascism, per se, in Spain, but was fighting for the Soviet Union's interests in Spain.

** Lautner establishes that "international working class" as used by Communists connotes an international class, controlled and led by the International Communist movement.

of approximately 115 men, and Phil Bard, formerly a *Daily Worker* cartoonist, its political commissar.*

Herrick's prime inducement to go to Spain was to help defeat fascism and to fight to make the Communist Party dominant in Spain. The publications which had the most influence toward motivating his going to Spain were the *Daily Worker, The Communist, New Masses,* and *Inprecor.* [fol. 23] As a Young Communist League member assigned to Party work in the waterfront section in New York City, Gladnick visited Fred Brown on the ninth floor of Party Headquarters** and volunteered to fight in Spain, and was told that as a disciplined member of the Party he would go only where he was sent, and he was directed to return to the waterfront.

In November of 1936, when Gladnick again went to Party Headquarters and met with Brown, Harris, Bidarian, and Tony DeMaio, he was told that the Party was recruiting a contingent for Spain and that the time for him to go had arrived. Like Herrick, he attended military drill sessions in New York where Allan Johnson was in charge, and Cooperman, Stember, and Phil Bard functioned in various responsible capacities with respect to the group.

As he was not an American citizen, Gladnick had been furnished by the Party through Gil Green and Al Richmond with false seaman's papers and a passport under the name of "Nat Wald" in order to enable him to work as a seaman and to carry out his Party assignment to infiltrate the International Seamen's Union on the New York waterfront. Upon being instructed to apply for a passport to go to Spain and not desiring to use the false papers, Gladnick contacted John Robinson, Party Waterfront Section Organizer, who, in conjunction with Al Lannon, Waterfront Section representative to the Party's National Committee, obtained a false birth certificate which Gladnick used to apply for a passport. Because he was questioned about the

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* Political Commissars are discussed p. 40, *infra.*

** Gladnick, because of his close association with Brown, could enter the ninth floor of Party Headquarters almost any time, which he says was a difficult thing to do, describing it as the "sanctum sanctorium."

birth certificate, Gladnick did not pick up the passport applied for but got in touch with Harris and Brown through whom he contacted a Communist woman who, in turn, introduced him to a crew member of the *Normandie,* under whose instructions, another person carrying his luggage, he boarded the *Normandie,* remaining aboard in hiding in the stateroom of Daniel Zarat and Robert Raven.*

Upon arrival at LeHavre the crew member took Gladnick to the home of a French high school teacher who was a leading Comintern agent for Western Europe where he stayed overnight.

[fol. 24] Arriving in Paris, this group gathered at a Communist Party restaurant bedecked with slogans proclaiming the "popular front" with pictures of Maurice Thorez and Andre Marty on the wall, and Phil Bard made arrangements for transportation to Spain.

At Albacete, Spain, the group was greeted by Andre Marty and then went to Villaneuva de Canada for training where Jim Harris was in charge, later assisted by Robert Merriman, who had come to Spain directly from Moscow.

Maken was with the second large contingent of 90-odd men to arrive in Spain, having sailed on the *Paris* from New York in early January 1937. Joining the first contingent which had arrived a week or so earlier, and of which the Petitioner's witnesses Herrick and Gladnick were members, they became known as the Abraham Lincoln Battalion, part of the 15th International Brigade.

Maken, as a member of the Party, also volunteered around September of 1936; was interviewed concerning, among other things, his Party background, by Bill Lawrence, then in charge of Party recruiting; was referred to Party National Headquarters and then to the Party's New York State Office where he was again interviewed concerning the nature of his Party experience, military experience and motives for wanting to go to Spain; was later interviewed in detail by a panel including Paul Crosby, prominent Party member in Brooklyn, Allan Johnson, and Fred Brown, concerning the same matters covered at Party

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* Zarat later functioned with the Russian Mission in Spain; Raven was a Party member.

Headquarters; was accepted after this interview and instructed to maintain strictest secrecy concerning his going to Spain; and attended drill sessions at various halls in New York City.

There was considerable uncertainty as to the actual movement to Spain and various dates were set by Lawrence and a number of postponements occurred until Lawrence finally assured Maken that a final date had been set, explaining that the Comintern had called for men from the United States. Pursuant to instructions given him by Lawrence, Maken obtained a passport through Intourist, which made arrangements for obtaining his birth certificate, application forms, and for payment of the fees involved.

Maken was designated a group leader in charge of the approximately 20 men from the New York area, Oliver Law and Rudolph Tieger, among others, were also in charge of similar sized groups, and Oscar Hunter was in overall charge. Discussions with Hunter and other group leaders who talked freely of their Party connections while on board ship brought out that one of the things the men were quite sure of was that they were about to enter an [fol. 25] army which was unique, to revolutionize the world; which was the first proletarian army in history that would be trained and led by Russian officers and by legendary Communists who had been anti-Fascist underground fighters against Hitler.

Oscar Hunter, a Party functionary, told Maken during the voyage that he was going to Spain reluctantly and explained that he had been ordered to do so by the Party. In this connection, the record shows that there were several categories of men who went to Spain: (a) those who were ordered to go by the Party and (b) those who volunteered through the Party. There were others who although they volunteered were not permitted by the Party to go, on the grounds that they had more important duties to perform at home in serving the Party's cause.* For example, the Petitioner's witness Lautner volunteered to go

* Budenz also testifies that not all Party members desirous of going to Spain were permitted to do so, and that Browder indicated that a screening would have to take place.

to Spain as did Leon Strauss, a member of Herrick's Young Communist League unit, but they were not permitted by the Party to do so. Maken also shows that there was a regular recruiting system set up within the Communist Party apparatus including its controlled mass organizations, with each Party branch and mass organization assigned a quota of men.

Maken left Paris on the way to Spain on a train designated "Red Special" which had assigned accommodations for those in this group and contained persons from various parts of the world bound for Spain to fight in the International Brigades. Upon arriving at Albacete, Spain, which was the International Brigade Headquarters, papers and documents were filled out, including a very searching questionnaire, and the passports of the men were collected, along with civilian clothing and personal effects.

In early April 1937, Hecht having decided to go to Spain contacted Harold Johnson, of the Party's New York Waterfront Section, and was subsequently taken before a screening board, given a medical examination, and told to apply for a passport and again contact Johnson. A travel agency arranged for a visa and transportation and on May 12, 1937, he sailed on the *Aquitania*.

Upon arriving in Paris, Hecht again went before a screening board located at Communist Party Headquarters there, and was questioned concerning his political and military background by a committee which included two Americans, Userra and Parker, among others.

[fol. 26] He entered the International Brigades in Albacete around the first of June 1937, and stayed in Spain 22 months.

In joining the ALB, Horan was referred from the Food Workers Branch of the Party to Eugene Bechtold, Party Organizer for Section 4, District 8,* and Secretary of the newly organized Friends of the Abraham Lincoln Brigade** (hereinafter also called FALB) which had offices in Dearborn Street in Chicago. Bechtold sent Horan to Irving

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* Comprised of the State of Illinois and some adjoining area.

** See p. 88, *infra*, concerning this organization.

Herman, Section 3 Organizer of the Party in Chicago, who then handled the Party's operation of getting men to Spain, and who stated that as Horan was doing important Party work with the Food Workers, it would be necessary to check to see if he could be sent to Spain. Later, Comrade Shaw, Section 5 Organizer of the Party, informed Horan that the (Cook) County Communist Party had decided he was to go to Spain.

Herman requested Horan to recruit as many non-Communists as possible to go to Spain explaining that the majority who had previously gone were Party members and that only so many could be spared and that in the process many of these non-Party people would be politically educated concerning the Communist movement. Both Eugene Bechtold and Irving Herman further indicated that although the Party had been unable to induce the comrades to take military training in the United States through joining the National Guard, such training would be received in Spain, and that as a result they would no longer be theoretical revolutionaries but would have learned the fundamentals of fighting a revolution.

Herman arranged for Horan's physical examination, gave him money to obtain a passport and paid his transportation to New York where, as instructed, he contacted a man named Harry. While reporting to Harry on a day-to-day basis at the Hungarian Workers Club in New York, Horan encountered a number of Party and non-Party people including one Edward Muscala who confessed to Horan that he was on his way to Spain to make up for his shortcomings in the Party. Horan was put in charge of handling the money and of getting a group of about 18 men to Spain, and was instructed to be particularly watchful for Trotskyites and police spies. The men were told to maintain secrecy and to pose as Americans going to France to visit the Paris Exposition. Boat tickets and visas for this group were arranged for by Intourist, the Soviet travel agency. [Vol. 27] The group sailed in late September 1937, on the *S. S. Laconia*, and pursuant to Party prearrangement they met an American named Jack in Paris who questioned Horan concerning the political reliability of his men. As

arranged by Jack, the group left Paris on October 3, 1937, and upon arrival at Figueras, Spain, was greeted by Tony DeMaio, who also questioned Horan concerning the political reliability of the men.

In Milwaukee in 1937, William Harris, then not a Party member, was asked by John Seacat (also known as John Brown), who was in charge of the FALB office there, if he wanted to go to Spain as they were in dire need of help. Seacat gave Harris the money to obtain a passport, made arrangements for bus transportation to New York, and gave Harris directions as to a contact in New York which he followed upon arrival there in early July 1937. Harris was given instructions as to the necessity of maintaining discipline and absolute secrecy, and he sailed in late July 1937, on the *S. S. Washington* enroute to France.

Upon arriving in Paris, Harris and three others with whom he had been traveling were taken to Communist Party Headquarters, where two Americans were present, for a physical examination and further instructions on how to get to Spain, the necessity for discipline being stressed. When Harris arrived at Figueras, Spain, he, along with a number of other men, availed themselves of the opportunity to unload ammunition from Russian ships for which they were given additional pay. From Figueras, he went to Albacete, headquarters of the International Brigades, at which time he was given a uniform and his passport was taken up, which he never saw again.

The Respondent presented three witnesses, Shipman, Morgan, and Wolff, who had gone to Spain and were members of the ALB. They do not refute the Petitioner's evidence concerning the formation of the ALB by the Party pursuant to Comintern directives. To the extent credited, as for example in the case of the Respondent's witness Shipman, who states he was never a member of the Communist Party, this evidence serves merely to emphasize what the Petitioner's evidence establishes, namely that some non-Party members were in the ALB and that not every single American in the ALB was sent there by or connected with the Communist Party.

Shipman's experience in getting to Spain is not at all representative and appears to be somewhat unique. He had been living in France for a number of years and returned to the United States to pick up ambulances donated to the Republican forces in Spain by Ernest Hemingway. He accompanied the ambulances to France and went on to Spain, joining the ALB at Albacete in the spring of 1937. His passage across the Atlantic both ways was paid by Hemingway.

[fol. 28] The Respondent's other witnesses, Wolff and Morgan, present an entirely different picture. Morgan went to Spain on the *S. S. Washington* in February of 1937.

Under cross-examination he says he paid his own way to Spain, out of savings earned from working on WPA. When asked how long it took to get to Spain, he claimed the privilege against self-incrimination under the Fifth Amendment, which the Panel refused to allow, and after consulting with counsel answered "approximately 12, 13 days." Morgan claimed Constitutional privilege when asked who he entrusted with the money to purchase his ticket to Spain, if he knew anyone aboard the *S. S. Washington,* and if he is now or ever was a member of the Communist Party.*

Wolff went to Spain in March 1937. Under cross-examination he conceded that the Petitioner's witness Hecht** was possibly within the circle of acquaintances with whom he discussed going to Spain; however, he is unable to recall who he saw about going to Spain, or where he saw the person. He doesn't recall any of the mechanics concerning his arrangements or departure for Spain, how he was notified concerning the name of the ship on which he was sailing, the time of sailing, etc. He states that his passage cost between $90 and $100, and he paid it out of his savings. When asked if he was at that time a member of any organization, he refused to answer, claiming Constitutional

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* See "Discussion of Law," *infra*, for effect of repeated invocation of Constitutional privilege by the Respondent's witnesses.

** Hecht, who has known Milton Wolff ever since 1934, testifies that Wolff had joined the Young Communist League before going to Spain and was a member of the Communist Party of Spain.

privilege. The same response came when asked if he had ever joined a political organization in Spain; if he was ever a member of the Communist Party in Spain; whether the Communist Party influenced him in going to Spain; if he was a member of the Communist Party or Young Communist League at that time; or whether he had ever been a member of the Party or the Young Communist League; whether he ever attended any Marxist-Leninist school organized and supervised by the National Committee of the Communist Party or the Party's School Commission; and whether he had ever read the book *Foundations of Leninism* by Stalin.

[fol. 29] When asked if he had ever known Budenz, Lautner, Matusow, Romerstein, or Huber, prior to their appearance as witnesses for the Petitioner in this proceeding, Wolff refused to answer, claiming Constitutional privilege.*

The Respondent's witness Asensio testifies that the rebellion of Franco in July 1936, disorganized the Republican Army and that the various political parties and syndicalist organizations, including CNT, the General Workers Confederation, and the UGT, General Union of Workers, raised militia which the Republican Government, commencing in August of 1936, undertook to organize into an army.

Asensio testifies that the International Brigades began forming around September of 1936, at Albacete, Spain, and first participated in the war on November 7, 1936, outside of Madrid. Military orders to these brigades, according to Asensio, came from the Spanish Minister of War through the Undersecretary of War and the Chief of Staff. He acknowledges that there were technical advisers in Spain from France, England, the United States, and a mission from Russia, among other nations, but asserts that the Spanish Republican Government as a sovereign didn't permit any intervention by any foreign missions into Spanish administration.

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* Under cross-examination Wolff states he did not know of and had nothing to do with the execution of any Americans in Spain, acknowledging that he had previously, before various Senatorial committees, refused to answer this question because he did not trust their honesty.

On cross-examination, Asensio states that the Republic of Spain from 1931 until September 1936, did not have diplomatic relations with Russia, but that such were established around the 23rd of September 1936, and had been preceded by discussions between these governments.

The testimony of the Petitioner's witnesses Lautner and Budenz concerning the formation of the ALB by the Party pursuant to a directive of the Comintern and in furtherance of its united front tactic is substantially uncontradicted and the demonstrative evidence adduced through witnesses Gladnick, Harris, Hecht, Horan and Maken establishes these facts by overwhelming preponderance on the record. There is, in addition, considerable documentary evidence which also establishes these facts and shows the relation of this operation to the Comintern united front.

For example, the official organ of the Comintern's Executive Committee in May 1938 (Pet. Ex. 5) shows clearly that the International Brigades were formed at its call and were regarded as a symbol of anti-Fascist unity in the united front. It provides:

> [fol. 30] "The International Brigades are selected units formed of anti-fascist volunteers from all over the world in reply to the call of the Communist International to render practical aid to the Spanish people attacked by Italian and German fascism. The brigades brought with them into Spain of the People's Front the spirit of the genuine international solidarity of anti-fascists, and effective military aid to their brothers in the struggle. (P. 445)
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> " . . . For a time hope also arose in connection with the conference of the representatives of two Internationals at Annemasse in 1937, but the reactionary leaders trailing in the wake of British imperialism have hindered the realization of international united action as proposed again and again by Comrade Dimitroff.
>
> • • •
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> " . . . They concluded a united front for life and death . . . Our heroic fighters of the International Brigades

have shown an example of how to fight against fascism in a united and common front.

"The Communist International, the Communist Parties of Germany and Austria, as the Communist Parties and peoples of other countries, can justly be proud of their fighters in Spain. They have borne aloft with honor the Party banner which is the fighting banner of the anti-fascists in their countries . . . " (P. 454, Pet. Ex. 5)

In his official report to the Party's Central Committee in July 1937, Earl Browder emphasized the high percentage of Party members in the ALB:

" . . . And not the least source of our pride is the fact that over sixty percent of the Lincoln Battalion members are members of the Communist Party. There is [fol. 31] now being organized among the Americans in Spain a second, the George Washington, battalion." (P. 613, Pet. Ex. 3)

Browder, in his report to Party functionaries in December 1937 (Pet. Ex. 6), stresses that they continue to maintain the ALB by supplying replacements and recruits, indicating that it was the CPUSA's duty to do so:

"Finally, and most important of all, we must understand that the Lincoln and Washington Battalion and the MacKenzie-Papineau Battalion are in the Spanish war until victory is won for the Republic.

"That means that a constant stream of reinforcements and replacements must continue, at least during this winter and spring, and possibly through next summer.

"The conditions for the International Brigade have much improved since the first 3,000 *unhesitatingly answered the call and went to Spain* . . . [Emphasis added]

• • •

"For us the slogan that rang out in Madrid only thirteen months ago, that was made a reality by the combined forces of world democracy, is a part of our

blood and bones, is woven into the very fabric of our lives.

"'*No pasaran!*' " * (Pp. 14-15, Pet. Ex. 6)

These established facts are practically summarized by William Z. Foster in his *History of the Communist Party of the United States* (International Publishers, 1952) (Pet. Ex. 168) as follows:

"The Communist parties gave all possible assistance to the embattled Spanish Republic. Most important of this help, they organized the International Brigades, which were made up of Communists and other anti-fascist fighters from all over Europe—France, Poland, [fol. 32] Italy, Germany, Bulgaria, Great Britain, and elsewhere, and also from many countries of the Americas. Fifty-four nations were represented. All told, the International Brigades were estimated to number up to about 30,000 men. Their political leader was the well-known French Communist, Andre Marty. The International Brigades constituted a tower of strength in the long and heroic struggle of the Spanish people.

"The C. P. U. S. A. and the Y. C. L. organized the sending of some 3,000 soldiers, many of them non-Party, to the Loyalist forces in Spain. This was a tremendous job under the circumstances. On January 6, 1937, the Abraham Lincoln Battalion was formed, and shortly afterward, the George Washington Battalion. Later they were merged into the Lincoln-Washington Battalion. The American forces, together with the British, Canadians, Irish, and other English-speaking groups, belonged to the 15th Brigade. Officers and leaders of the American volunteers included I. A. Valledor, R. H. Merriman, Hans Amlie, Leonard Lamb, Milton Wolff, Dave Doran, John Gates, Robert Thompson, Steve Nelson, Joseph Dallett, George Watt, Bill Lawrence, Saul Wellman, Joe Brandt, and others.**

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* The Respondent also uses this slogan, see p. 135, *infra*.

** Merriman, Lamb, Wolff, Gates, Thompson, Nelson, Watt, Lawrence, Wellman, and Brandt were Communist Party members and functionaries.

American medical units were headed by Dr. E. K. Barsky. (Pp. 371-72)

* * * *

"... Along with the soldiers from the United States there fought some 500 from Mexico, Cuba, Puerto Rico, Argentina, and the Philippines. The Canadians were mainly members of the Mackenzie-Papineau Battalion, the 'MacPaps.' They numbered 1,300. Dr. Norman Bethune of Canada, who later served with the Chinese People's Armies . . . (P. 372)

* * * *

"The Communists of the United States may well be proud of the active part they took in the gallant [fol. 33] defense of the Spanish Republic. It constituted the most glorious event in the entire life of the Party. The volunteers fought in the resolute spirit that Communists invariably have shown on the battle fields of Russia, China, and in many other parts of the world . . . " (P. 373, Pet. Ex. 168)

Character and Function of ALB in Spain

In addition to the foregoing it is deemed necessary and desirable to further set forth the evidence of record of men who were there, showing the character and actual functioning of the ALB. When it is considered that the ALB veterans constitute the Respondent's membership, the relevancy of this evidence is manifest.

The Petitioner's evidence establishes that the official organ of the ALB in Spain was controlled by the CPUSA and reflected the Party line; that Communist publications were predominant in the reading material furnished the men; that non-Communist publications as well as mail were censored for Party purposes; that strict control and discipline was exercised over ALB members by the Party and the Comintern and so-called political dissidence was not tolerated and was severely punished; that a political commissar system to indoctrinate and insure the reliability of troops from the Communist's viewpoint was employed; that a secret police also operated to enforce Communist discipline and that ALB members functioned as part of this

police system; that Party and Comintern functionaries were in dominant positions of leadership; that ALB members were recruited, trained, and operated as Soviet agents, all of which further evidences that the ALB in Spain operated as an integral part of an international Communist united front against fascism.

Communist Control of ALB Literature and Mail

The ALB had an official controlled organ called the *Volunteer for Liberty*.* As stated in Pet. Ex. 50:

> "The *Volunteer for Liberty* was written for and by these men. Its first issue was published in Madrid on May 24, 1937, and its sixty-third and last in Barcelona on November 7, 1938 . . . and it was also an instru- [fol. 34] ment of propaganda and morale for the men for whom and by whom it was written.
>
> "Ralph Bates, the British novelist, was its first editor. Edwin Rolfe, the American poet, was its second. John Tisa, an American worker, was its last . . . "** (Pet. Ex. 50)

It served as a means of giving and exchanging information and of expressing the policy of the Brigades, and was generally distributed among the English-speaking personnel in Spain. Maken was an official member of the editorial staff of the *Volunteer for Liberty* in Madrid from around the middle of October 1937, until the latter part of March 1938, and wrote a number of articles for this publication (see, for example, Pet. Ex. 56). His function included planning the issue with John Tisa as well as original writing and rewriting from other sources, principally Communist publications such as the *Moscow Daily News, Mundo Obrero* (official organ of the CPS), the *Daily Worker*** and *New*

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* Copies of this organ published in Spain comprise Pet. Exs. 55, 56, 83, 84, 87.

** Bates was a member of the Communist Party of Britain, and Tisa was a functionary of the CPUSA.

*** The *Daily Worker* was on the mailing list of the *Volunteer for Liberty*, and frequently reprinted material from it without any permission granted by the *Volunteer for Liberty*.

Masses. The policies expressed in the *Volunteer for Liberty* at any given time were determined by the principles expressed in the foregoing publications and there were *regular* staff meetings at which the content and the Party line to be dispensed were discussed.*

At the outset, this organ was devoted entirely to political matters and contained principally propaganda for morale and information purposes, but later contained a substantial [fol. 35] amount of military information which was interpreted and presented to point up its political significance, in conformance with the Party position. For example, an article in the October 11, 1937, issue of the *Volunteer for Liberty* (Pet. Ex. 87) concerning the situation in Ethiopia, ostensibly unrelated to anything in Spain, had to be included for political reasons at the insistence of the British comrades in an attempt to point up and revitalize Ethiopia as an issue to the Americans in Spain.

Similarly, an article entitled "New Tasks for the International Brigade" by Luigi Gallo, Inspector General of the International Brigades, second in authority to Andre Marty, had to be published, as did all such statements issued by either Marty or Gallo. As another example, the article "The World Situation—Is It Peace or War?", written by Oliver C. Green, an Englishman (Pet. Ex. 87), was preceded by rigorous discussions as to its framework and points of emphasis before Green put pencil to paper and as published reflected the current Party line.**

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* As stated in the *Daily Worker*, March 27, 1949 (Pet. Ex. 52), comparing this publication with U. S. Army World War II publications:

"... The 'Volunteer' was better because the anti-fascist aims of the Spanish peoples' army were simpler, clearer and cleaner than those of the American Army, with the class forces behind it.

"THE KEYNOTE of the 'Volunteer' was international anti-fascist unity."

** This article provides:

"To the members of the International Brigades, aiding the Spanish people in their struggle for independence, the outcome of the competition between the forces of peace and war is of supreme importance, for, as our presence in Spain indicates, the struggle here is closely bound up with circumstances in the world outside ..."

[fol. 36] The American and British *Daily Worker** editions were received in Spain regularly and in great quantities, being greater in number than all the other newspapers combined. Other Party publications such as *New Masses*, the *Midwest Daily Record* (launched by the CPUSA during the Spanish Civil War, see p. 12, *supra*), *People's World*, *Inprecor*, *Moscow Daily News*, and a great deal of literature published by the Communist Party of Spain, including its official organ *Mundo Obrero*, and pamphlets of speeches by Diaz, Ibarruri, and other leading Spanish Communists, was received, distributed, and read in the ALB. Party literature would normally be brought to the political commissar and distributed by him to the men. Emphasizing this predominance of Party literature is the fact that not until the end of the Spanish War did the Petitioner's witness Horan see anything but Party-line publications while in Spain.

While in Madrid, Maken had the additional duty of censoring magazines from the United States and England, which included the *Saturday Evening Post*, *Collier's*, *Harper's*, *The New Statesman*, *Nation*, *Time*, and *The New Republic*, among others, before they were distributed to ALB troops. His instructions were to physically remove any material that would tend to indicate that a Loyalist victory in Spain was not inevitable or any unfavorable

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It also, as was done constantly, links the international significance of Spain with the struggle against "fascism" in China during this period, thus further evidencing the international significance of Spain and the pattern and objective of the Soviet Union's world-wide united front:

> "In the Far East, the struggle for Chinese independence continues. Japanese fascism, well-armed, with its well-laid plans for the conquest of the north of China, is met by an unexpected resistance. *The growing unity of the Chinese people, which has its parallels here in Spain*, faces Japan with serious problems . . ." [Emphasis added] (P. 15, Pet. Ex. 87)

* The CPUSA *Daily Worker* had correspondents in Spain, such as Joe North, living with the troops of the ALB and reporting the war to serve Party propaganda purposes. These correspondents were permitted to come and go at will, and were admitted to places where other correspondents were not welcome.

references to the Soviet Union, the international Communist movement, or the Communist Party; however, the *Daily Worker, New Masses, Moscow Daily News,* and *International Press Correspondence were not* censored in any respect.

The supreme authority at International Brigades Headquarters over this work in Madrid and every other phase of Brigades activities was Andre Marty. Maken, who lived in the Headquarters Building, as did Andre Marty, and frequently ate at the same table, states that Marty was regarded in Madrid as the personal representative of Joseph Stalin.

Witness Herrick, after his political reliability had been thoroughly tested, was assigned to read the mail of ALB members for signs of political dissidence; namely, criticism of the Communist policy in Spain. He was assigned by and [fol. 37] performed this task under the direction of one Neumann, Chief of Police of the International Brigades, a Comintern agent, and a high functionary of the Communist Party of Germany, who had the power of life and death over ALB members.

Tony DeMaio, a CPUSA member, operated as a member of the secret police checking on political and military dissidence and any breach of Party discipline for which he had the power to arrest and execute. He and others performing these functions, such as Felix Kuzman, William Ellis, and Robert Cohen, were generally referred to as "GPU" agents, indicating that they took orders directly from the Russian Secret Police* and acted on behalf of the Comintern.

Communist Discipline of ALB Members

There are numerous instances of record where, for political dissidence or breaches of Party discipline, members of the ALB have been disciplined in Spain and in some instances expelled from the CPUSA for their actions in Spain.

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* Gladnick testifies that the Communists were also able to completely dominate the secret service of the Spanish Army, called Servicia de Informacion Militaire.

Herrick, while in a Brigade base hospital in Murcia, was told by Oscar Hunter, Political Commissar* for Americans (later Political Commissar for all English-speaking hospitals in that section of Spain), that he had been assigned to Spain by the Party against his will. Hunter's superior to whom he reported was Neumann. At various times in the presence of both Herrick and Hunter, Neumann stated he had recently caught and killed "Trotskyite Fascists."

Herrick, who had begun to express certain political doubts as to the role of the Party in Spain, was told by Hunter to avoid any such discussions in the presence of Neumann. After expressing such views to his nurse while in the hospital, Herrick was called into Neumann's office and told that he was to be a "good boy" or suffer the consequences, which Herrick understood to mean that he should no longer express dissidence concerning the Party line or he would be jailed and possibly executed.

[fol. 38] Herrick explains that a Communist, wherever he is, is under the discipline of the Communist Party in that country; that the line of the CPUSA and the CPS was the same, and that he was under the same Party discipline in Spain as in the United States. Subsequently, he was assigned by Neumann to ascertain the political ideas of a Frenchman working in the Brigade Information Press Service where Herrick was also working while recuperating,** and, regarding this as a test of his own Party loyalty, he did not concur in the Frenchman's expressed dissident views. Later, Neumann told Herrick that he had become a "real good boy" and assigned him to checking the mail of English-speaking members of the Brigade as discussed above.

Marvin Stern, who had been a political commissar, succeeding Phil Bard (both established as Party members), was removed as such and disciplined (assigned to a penal bat-

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*See p. 40, *infra*, for discussion of Political Commissars, and pp. 84 and 119, *infra*, concerning elevation of Hunter in the Party for his work in Spain.

** This accords with Lautner's explanation of a Party control task which is a disciplinary measure.

talion and then disappeared) for criticizing the political and military leadership.*

In August of 1937, when a committee from the FALB,** including Max Bedacht, a member of the Party's National Committee, and Phil Bard, former ALB Political Commissar, toured Spain, Herrick inquired of Bard on the basis of friendship as to the whereabouts and welfare of Marvin Stern, whereupon he was told "Communist Party discipline is higher than all friendship, and if I were you I would not discuss this matter any further." (Tr. 519)

In May of 1937, three high-ranking CPUSA members, namely, Harry Haywood, Bill Lawrence, and Steve Nelson, visited the ALB. When questioned concerning the whereabouts of various persons, including Marvin Stern, Nelson indicated that Marvin Stern should be forgotten and not inquired after in the future.

Gladnick was also told in Spain by John Gates, high Party functionary and a Brigade Political Commissar that one Harry Perchick, a mutual acquaintance from the Young Communist League in New York, had been executed because he was criticizing the Party and the Communist movement. When asked by Gladnick how he could take [fol. 39] care of such a matter when he had eaten in Perchick's home, and knew him so well, Gates replied to the effect: "You have to be a Bolshevik, and a Bolshevik would take care of his own mother. We have to introduce discipline." (Tr. 1535)

A Party meeting consisting of commissars within the Lincoln Battalion was held to determine what should be done about Bill McQuistion was had joined the CNT (Convencion Nationale de Trobajars), which was an Anarchist-controlled labor union organization, and it was decided that he could be disciplined at a later date so no immediate action was taken. McQuistion would have been favorably regarded in the ALB if he had joined the UGT, a Communist-controlled union organization.

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* Stern, prior to his disappearance, indicated a bitterness to Maken at his dismissal from the rank of commissar saying that he would take it up directly with the Party when he got home.

** See p. 88, *infra*, concerning the Friends of the Abraham Lincoln Brigade.

Horan was imprisoned at Castillo De Fels, an International Brigades prison at Castells, Spain, where he met a number of other Americans, including Frank Cone, Lewis Oliver, and Albert Wallach. Wallach, while in Barcelona with the ALB, had contacted the CNT (Anarchist labor union organization) and had been given a commission as a colonel in a division commanded by CNT personnel. While working in the CNT offices at Barcelona, he was picked up by several plain-clothesmen and accused of being an American spy. Horan last saw Wallach when he was taken from the hole, which they shared, in the middle of the night and Wallach indicated that he wouldn't be back. Shortly thereafter, machine gun fire was heard and Wallach has never been seen since. His chief accuser and interrogator had been Tony DeMaio.

At Pozorubio, an International Brigades training base, two Czechs, during a party, made critical remarks about the Communists in Spain. The following morning these men were missing and troops were told that they had been disciplined for their remarks the night before.

The Petitioner's witnesses establish that Paul White, formerly a Political Commissar of the ALB, was executed by a firing squad consisting of ALB members near Marsa, Spain, in or about May of 1938, for political reasons, not having committed any military offense and not having been tried by a military court.*

It is established that a member of the ALB was subject to three levels of discipline: (1) the military discipline of the Spanish Republican Army; (2) the discipline of the International Brigades; and (3) the discipline of the Communist organization.

[fol. 40]

POLITICAL COMMISSARS AND COMMUNIST INDOCTRINATION

The ALB and other International Brigades as well as regular units of the Spanish Republican Army had political commissars. Gladnick explains that in an Anarchist unit

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* There is no variance in the evidence that there were no courts-martial in the ALB or the International Brigades.

the political commissar was of Anarchist persuasion; the same holds true concerning a Socialist unit; et al. In the 15th Brigade, political commissars functioned on every level of command from section to Brigade.* It is established that throughout the International Brigades, with few exceptions, all commissars were Communists. This political commissar system was modeled after that of the Soviet Army.

The Executive Committee of the Comintern in its official organ, the *Communist International* for May of 1938 (Pet. Ex. 5), clearly shows that the political commissar system in the International Brigades was the handiwork of Andre Marty and Luigi Gallo; that military and political training were indissolubly connected in the Brigades; that commissars dispensed the Communist Party line in their political training, connecting up the war with "the work of illegal parties"; and that Caballero and Prieto, as responsible leaders of the Spanish Republican government, opposed the Institution of the commissar system. This exhibit provides as follows:

> "The defeat of the fascist offensive on Madrid was achieved at the cost of tremendous losses. An explanation had to be given to the fighters as to the causes that had given rise to these losses; it had to be explained to them *that in war as in the work of illegal parties* there cannot and should not be any false heroism and useless sacrifice. Thus, step by step, military work was linked up with politieal explanatory work.
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> "The battles around Madrid proved that political commissars are absolutely necessary. *The work of the political commissar must secure the fulfillment of military tasks. As regards responsibility the political commissar is on an equal footing with the commander* . . . (P. 448)
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> [fol. 41] " . . . The establishment of this type of political commissar is the great merit of the central

* There were normally two or three sections in a company, and three or four companies to the battalion.

political department of the International Brigades headed by such comrades as André Marty and Galle [sic]. (P. 449)

"Political work in the International Brigades was indissolubly connected with the military training and education of the men . . .

"Therefore, Caballero's struggle against the Political Commissars as an institution was a crime* against the army and the country. The more subtle, but nonetheless ruinous policy operated by Prieto, by introducing the spirit of 'no politics' in the army, was one of the reasons why there were times when the People's Army failed to withstand serious tests in face of the enemy's technique.

"Comrade Pasionaria** has given a correct characterization of the role of the political commissar:

"'Commissars are the political soul of our army; they inspire it with heroism, *see to its ideological education,* strengthen its faith, and hand in hand with the military commanders lead it to victory. Such an army as ours cannot do without commissars, and their role must not be underestimated.'

"If the International Brigades, if the divisions commanded by Lister, Modesto and Campesino maintained their fighting power until the very last moment, [fol. 42] this is because the work of the Political Commissars (this most important precondition of the fighting power and high morale of the troops) *which accompanied strict discipline,* was always on a high level in these divisions.

* * *

"The concise line of the Communist Party in Spain —the line of the People's Front—was the guiding

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* The technique of Communists within the People's Front in Spain to attack and charge with serious crimes other members of the government, here exemplified, is further discussed p. 54, et seq., *infra.* Cf. in this connection the evidence on the united front tactic, p. 16, *supra.*

** Dolores Ibarruri, member of the Central Committee of the CPS.

star in political training of our cadres and in improving the political morale of the battalions . . . (P. 450)

• • •

"Many difficulties that arose out of the specific character of the International Brigade and of the influence of the inner political struggle for the life of the battalions were only able to be solved with the aid of the Party organizations which existed in the battalions from the very outset and the decisions of which were always carried through by the Communists.

"The best Communists were always at the head of the brigade and the battalions . . ." [Emphasis added] (P. 454, Pet. Ex. 5)

Maken explains that the basic meaning of life and any of its manifestations to a Communist is political, and that, as conceived in the Communist Party, the commissar was necessary to explain, to control, step by step, the course of the Party's political program. He states "The commissar, in short, was a thought control agent, an intellectual policeman." (Tr. 747)

It is established that the commissar was the political head of the military unit and that although military commanders had supremacy in military matters, they were under the supervision and control of the commissar; that the supreme head of the ALB was its political commissar who had absolutely complete superiority over the military commander at all times; and that the commissar's function included looking after the welfare of the men, but primarily was to see that they were properly indoctrinated politically to avoid dissidence and to assure obedience to discipline, both political and military. Such political indoc- [fol. 43] trination was carried on at meetings of the ALB where the Party's role in Spain was discussed and inquiry made to ascertain if there was any disagreement on these matters.

Every political commissar over Herrick in the ALB was a CPUSA member and the indoctrination dispensed was that of the CPUSA which coincided with the line of the

CPS and the world Communist movement. They were interested chiefly in the discipline of the Party to enable it to carry out the policies of the world Communist movement under the leadership of Stalin and the Communist Party of the Soviet Union (herein also called the CPSU).

There was a so-called "Little Politbureau" in Spain whose meetings Herrick attended along with Phil Bard, Marvin Stern, and others, at which integration of the line and policy of the Communist Party into the ALB was discussed. While in the hospital at Murcia, Herrick again discussed this integration with Phil Bard, Marvin Stern, Solly Wellman (also known as Saul or Sol Wellman), Phil Cooperman, and a doctor.

Horan was given political instructions in Spain at meetings he attended as political delegate for the Third Company, replacing the previous political commissar. He establishes that, according to circumstances, the commissar at times spoke on military matters to spur the men on to greater efforts in their training, or, as was more often the case, spoke entirely on political subjects and lectured on a relatively high Marxist-Leninist level.

In November of 1937, Robert Minor, a member of the Party's National Committee, spoke to a closed meeting of ALB political commissars with Horan present, for the purpose of giving them the news of the fall of Santandar, Spain, and to lay down the political line with respect thereto. Horan attended many political meetings in Spain; some were called as commissar meetings and others were Communist Party of Spain* meetings where Spaniards would lay down the line of the CPS, still others were called as CPUSA meetings. He knew Walter Garland as Political Commissar of the Lincoln-Washington Training Battalion at Tarazona, Spain, in October 1937, and attended meetings of political commissars and delegates at which Garland, as a member of the CPUSA, handed down instructions.

[fol. 44] Hecht too, as an ALB member, attended many indoctrination talks by commissars, the substance of which

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* See p. 64, *infra*, re ALB members joining the Communist Party of Spain.

was basically the Communist line as it related to Spain at that time. He heard Earl Browder, Secretary General of the CPUSA, speak outside of Teruel around early March of 1938, and Gil Green, leader of the Young Communist League in the United States, speak at the training base at Tarazona during July of 1937. Members of the ALB who were also members of the Communist Party of Spain received instructions and training in Communist principles, policies, strategy, and tactics.

Harris, while in Spain, also attended political meetings conducted by commissars, the first of whom was Charles Keith. Keith warned the men not to fall into any of the traps or to be persuaded by any of the propaganda put out by the Anarchists and Trotskyites in Spain, as their sole purpose was to wreck the Republic.* ALB troops were expected to attend such political meetings, but this was not an absolute requirement.

Bill Titus, company commander, and a Party member, stressed the necessity of maintaining ironclad discipline and of the men availing themselves of all knowledge that would be forthcoming from the field in order that they be fully prepared to lead the fight for world revolution when they returned to the United States.

Andre Marty, supreme political head of the International Brigades, in the *Volunteer for Liberty* for November 1, 1937 (Pet. Ex. 83), stresses the Communist orientation of the political commissars and the political character of the Brigades:

> "The International Brigades have never been non-political. Far from that. Not a unit has gone to the front without the Political Commissars being appointed by the side of the Brigade Battalion, Company, Battery and Squadron Commanders. *These Commissars have relied on the workers who form the majority in the units, and among them on the mass*

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* See in this regard the Comintern's statement quoted, p. 42, *supra*, from Pet. Ex. 5, concerning the solution of "the inner political struggle for the life of the battalions."

of Socialists and Communists who now in reality form one united body. It is here that the essential strength lies." [Emphasis added] (P. 10, Pet. Ex. 83)

[fol. 45] In the summer of 1938, at Marsa, John Gates, Brigade Commissar, made a number of speeches to the ALB. Andre Marty also spoke to the ALB at this time expressing the prevailing Communist position, which attempted to demonstrate the importance of all anti-Fascist forces forming a coalition against Hitler, Mussolini, and Franco in a united front.

It is established in the record that the following persons were political commissars in Spain and also members of the CPUSA: Phil Bard;* Joe Brandt; Archie Brown;* Phil Cooperman; Dave Doran; John Gates;* Carl Geiser;* Oscar Hunter; Kavorkian; Charles Keith; Fred Keller (Fred P., Jr.); Bill Lawrence; Vaughn Love;* Steve Nelson;* John Robinson, alias Robbie, Jack, John Quigley;* Ben Sills; Harold Smith;* Marvin Stern; George Watt, alias George Kvatt; Saul Wellman.

Communist Leadership of the ALB

Concerning the leaders, both military and political, of the ALB, it is established that Party members newly arrived in Spain entered leading positions either as military commanders or as political commissars,** and that such commissions and titles had been awarded by the Party in New York. Al Tanz, Phil Bard, James Harris, and others were so appointed. As shown above, political commissars from Andre Marty and Luigi Longo down through those in the ALB were Communists.

The first military commander of the ALB was Jim Harris, a Party member who was summarily removed and replaced by Robert Merriman, also a Party functionary,

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* Indicates these persons were later also officers and leading functionaries of the Respondent.

** Maken states such persons came to be referred to as "ninth floor generals" (Tr. 749), referring to the ninth floor of Communist Party Headquarters in New York where the Politburo was located.

who had come directly to Spain from Moscow,* and after Merriman, Vandenberg, Martin Hourihan, Oliver Law, and Milton Wolff variously commanded the Battalion. (For other CPUSA leaders of the ALB, see Foster's statement p. 32, *supra.*) Oliver Law, a Negro, was placed in [fol. 46] command for the underlying purpose of training him for future leadership among Negroes in the United States, thus implementing the Party's program of developing the Negro as an ally. In this connection, Sterling Rochester, a Negro who came to Spain directly from Moscow where he had attended the Lenin Institute, conveyed in his talks the Communist position that the solution of the Negro problem in the United States was the establishment of a black republic, a Negro nation.

As further evidence of the complete pre-eminence of the Party in the ALB, it is established that as a result of the tremendous toll of wounded and killed taken in the battle of Jarama in late February 1937, a protest delegation, of which Gladnick was a member, went to Brigades Headquarters and demanded among other things that contact be made with the CPUSA immediately. Also significant is the fact that Horan's Communist Party record aided him in obtaining his release from the International Brigades prison, when cited to Luigi Longo (then known as Luigi Gallo), Commissar Inspector of the International Brigades.

Gladnick, who later served with the Russian mission in Spain, establishes that Communists ran the International Brigades as a Communist organization, and that, although officially they were part of the Spanish Army, the political and military command were in the hands of Communists directly.

Indicative of this is the fact that a letter from the Russian Political Commissar, Fotchomkov, to Brigades Headquarters at Albacete in October 1937, obtained a commission for Gladnick as a first lieutenant in the International Brigades.

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* Robert Thompson, later a high CPUSA leader and functionary in the VALB, was introduced to Herrick in Spain as a comrade who had just come from Russia.

The Respondent's witness Asensio explains that in about September 1936, a political commissariat was set up because the Republican military command felt the need of political advice, and that Andre Marty was in charge of it for the International Brigades at Albacete. He states that from about September of 1936, the Spanish Army had political commissars who were of the old political parties such as the Union Republican, the Left Republican, Socialist, and Labor parties, who were in the regular army to advise and assist the military command in its relations with the people. He denies that the idea of the political commissar was taken from the Russians, stating that the introduction of political commissars was his own idea based on his experience when he was an adviser to Moroccan troops in North Africa.

[fol. 47] Although a military man since 1907, he disclaims knowledge of the fact that the Russian Red Army had political commissars. He concedes under cross-examination that there were Communists in the International Brigades, but states that knowledge of such fact was not required of him. He assertedly has never heard of Earl Browder, and does not know the names of the organizations in the various countries which recruited and sent International Brigades troops to Spain. He states that upon visiting the Brigades headquarters he had no personal contacts with persons there, that he reviewed one parade there but didn't speak with the troops. He never knew anyone personally in the ALB in Spain and has no knowledge concerning their membership in the Communist Party. He testified that he had never heard of the Communist International, but acknowledges that there are international Communists. He has never heard of the *Volunteer for Liberty;* and does not know the political affiliations of the Americans who were in Spain or who sent them to Spain.

The Respondent's witness Wolff testifies that there was no political activity of any nature that he knows about or any attempt to recruit ALB members into a given political party. He states that the political instruction that he received in Spain dealt primarily with military affairs as methods of winning the war by intensified train-

ing, fortification, discipline, relationships with the people, it included as well the world situation with respect to Spain, particularly what England, France, and the United States were doing and what their positions were. He testifies that the political commissar attempted to exert influence over the men for one reason only, and that was to make better soldiers of them in support of the Republican Government.

Under cross-examination, Wolff states that there were regular formations at which commissars spoke and he recalls hearing Andre Marty speak to the ALB. He acknowledges that Earl Browder, the CPUSA General Secretary, spoke in Spain, but when asked whether he knew him he refused to answer, claiming Constitutional privilege.*

When questioned under cross-examination as to whether or not he gave instructions to members of the ALB in the policies of the Communist Party and how to carry them out, Wolff states that by his definition he did not, explaining that he construed the question to mean the theories and principles of Marxism-Leninism.

[fol. 48] The Respondent's witness Shipman (not a Party member), who speaks fluent French, was appointed for convenience as a commissar for French patients at the hospital in Murcia for about three months. He testifies that the function of a commissar was one of explanation; that particularly in a citizen army, without military tradition, explanation of the necessity of the military command, explanation to the troops of their purpose, of their role as political men in the fight against fascism, was the reason for the commissar.

He testifies that the troops were free to, and did constantly criticize the Spanish Government and the conduct of the war. He states that he was given no training by the Soviet Government, that he did not receive any training in Marxism-Leninism, the principles, policies, strategy,

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* As stated p. 28, *supra*, Wolff also claimed Constitutional privilege when asked if he was a member of the CPS, or had joined any organizations in Spain, or if he was a member of the CPUSA at this time.

or tactics of the Communist Party, to qualify him to undertake assignments for the world Communist movement; and likewise in sabotage, or overthrowing the government by force and violence while in Spain, and knew of no plan to sovietize Spain or the United States.

The Respondent's witness Morgan admits to little knowledge of political commissars, stating that he has never had discussion with one personally. His idea of a political commissar is a "guy that tries to see that the morale and what-not is kept up." (Tr. 3273) He testifies that while in Spain he was given no training with respect to the Soviet Government, Communist Party principles, carrying out a future assignment in Spain, the United States, or other parts of the world for the CPUSA, the CPS, or for the world Communist movement; and that his orders were received only from a military source.

As indicated, Wolff's direct testimony in this area is seriously impaired by the preclusion of full cross-examination as to his activities in Spain, as a result of his invocation of Constitutional privilege. Asensio's professed or actual ignorance of Communists in Spain, of the Communist International, and of the ALB, detract materially from the weight given his direct testimony. To the extent credited, the testimony of Asensio, Wolff, and Morgan, along with that of Shipman concerning the foregoing, is outweighed by the Petitioner's evidence.

ALB Members Trained as Soviet Agents

It is further established that the Soviet Union supplied arms and munitions to the Republican Government of Spain and that a Russian mission operated in Spain, and that members of the ALB functioned as agents in direct liaison with this mission and with the so-called secret police of the International Brigades.

[fol. 49] In March 1937, Gladnick, who spoke fluent Russian, was transferred at the request of Russian General Pahvlev, to the Russian mission in Spain, serving there until the middle of June 1938. Daniel Zarat and one Hendrickson were other Americans serving with this mission.

In Valencia, John Gates, ALB Political Commissar, introduced Gladnick to Robert Minor, stating that the latter

was working with the "Mexicans", terminology used in Spain in referring to the Russians. Minor's job was to recruit agents for Soviet intelligence from among ALB members, and assignments were given to him, according to Gladnick, by a Russian, Colonel Belayev. Minor then took Gladnick to Colonel Belayev at the Russian Embassy, who told him that a diversionist group was being organized by the Russians for demolitions and behind-the-lines activity, and that when the war was over in Spain its members would be used throughout the world. Belayev indicated that Gladnick, upon joining this group, would have to be transferred from the CPUSA to the Communist Party of the Soviet Union.* Gladnick's Russian Political Commissar, Fotchomkov, upon learning of this prospective assignment talked with Belayev, and then told Gladnick that he was to remain with the Russian mission, that Belayev would have to recruit his agents elsewhere.

John Gates (also known as Irving Regenstreif), who succeeded Bill Lawrence as Political Commissar of the Albacete base, recruited members of the ALB for work with the Russian intelligence. Political Commissars such as John Gates, Bill Lawrence, and Steve Nelson turned over to Robert Minor men who were then sent to the diversionary school where they were taught sabotage and commando tactics by Russian experts, such persons becoming members of the CPSU for use in the future wherever the Soviet Union directed.

William Aalto and a man named Flaherty, ALB members, attended this diversionary school, and Gladnick was told by Colonel Belayev that other Americans had gone through this school. These men were hand-picked as above indicated and were trained by Russian Red Army experts in demolitions and communications. They were unique in that their membership in the CPSU superseded their mem-

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* Gladnick did not join the Communist Party of the Soviet Union (herein called the CPSU) while with this mission, explaining that it is open only to citizens of the Soviet Union, except for those foreign Communists who became directly connected with the Soviet intelligence, or military. There were a number of instances of the latter sort.

[fol. 50] bership in the CPUSA, and they would receive their orders through Russian channels and not from the American Party.*

Aalto, who attended this school, and Irving Goff, CPUSA functionary, both later members of the Respondent, in an article entitled "Guerrilla Warfare in USSR and Spain" (Pet. Exs. 23 and 24), written in 1941, while members of the Respondent, confirm in large part Gladnick's testimony as follows:

> "The Soviet doctrine of peoples' war,** first applied in Russia during the Civil War days, then in China, Ethiopia, and Spain, has shown the little man throughout the world his terrific strength . . . (P. 17)
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> • • •
>
> "The whole concept, theory and practice of guerrilla warfare was worked out in great detail by the Red Army years before 1941. In China and Spain guerrilla warfare was organized under Soviet advice and according to Soviet principles.*** (P. 17)
>
> • • •
>
> "Our Soviet military advisers in Spain brought us the principles of that science .... (P. 17)
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> • • •
>
> [fol. 51] "Roughly, guerrilla activities can be divided into three main heads. One is *sabotage*, the disruption of services in occupied territory by cutting power lines

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* Gladnick explains that all Communists owe first allegiance to the Soviet Union; that an American who is a member of the CPSU may also be a member of the CPUSA, but would be controlled by orders from the Soviet Union and could even, if ordered, become an ostensible anti-Communist.

** It is pertinent to note the references to the wars in Spain, China, and elsewhere as being "peoples' wars," as well as the use of the term "peoples' army" throughout the documents cited in this Report. See e.g. p. 41, *supra*, pp. 61, 74, 186, 192, and 223, *infra*.

*** Cf. p. 52, *infra*, re General Walters, Soviet citizen, as Division Commander in Spain who also had functioned on the staff of the Chinese Red Army.

to factories forcing them to close down for repairs, cutting telephone and telegraph wires, interrupting flow of supplies, and so on. A second activity might be called *diversion,* that is drawing off enemy reserves, diverting his attention and energy to another sector while a blow is being struck . . . (P. 17)

• • •

". . . When the enemy's mopping up activities become too hot they break up into smaller bands. The regulars become irregulars. That is part and parcel of Soviet military strategy, which establishes two kinds of guerrilla units—those working in comparatively strong formations and those roving partisan units, far in the enemy rear, who attack, harass and break enemy lines of communications, and maintain, by political work, the morale of the people, keeping them in readiness for mass action at an appropriate time.* (P. 20)

• • •

"The success of the guerrilla units in China, organized with Soviet assistance, needs no comment . . . (P. 20)

• • •

". . . The Spanish guerrillas have not forgotten the lessons taught them by their Soviet advisers . . ." (P. 20, Pet. Ex. 23)

• • •

". . . In our guerrilla schools, lessons from the Red Army's experience were taught to us, verbally and through Spanish translations of Red Army manuals. [fol. 52] The mines, and the trick apparatus we used in Spain were constructed from patterns given to us by our Soviet advisers . . ." (P. 22, Pet. Ex. 24)

Joe North, *Daily Worker* representative in Spain, who spoke Russian, acted as a courier between the CPUSA and

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* Cf. the emphasis in the International Brigades on political work as part and parcel of the military operation, e.g., p. 41, et seq., *supra.*

the International Brigades Headquarters, as well as liaison between the various Brigades.

It is established that CPUSA members operated in the Servicia de Informacion Militaire (SIM), the secret service of the Spanish Army which Gladnick states was dominated by Communists. William Ellis and Robert Cohen, CPUSA functionaries, worked for the SIM, Cohen, referred to as a "GPU agent," reporting to Russian "GPU" personnel.

Further evidence of ALB members functioning in conformation with the Comintern is that Robbie Robinson (also known as John Q. Robinson) told Harris that Steve Nelson, then a political commissar, ordered him to leave Spain to take papers to Russia and to report while there on the situation in Spain. In so doing he was interned by French police, but escaped with French Communist aid, and was met by a Comintern agent in Russia who escorted him to Moscow where he remained for approximately three weeks reporting on the morale of American troops in Spain, and making recommendations as to ways to improve it. He eventually returned to the United States.

Gladnick met General Walters* at social affairs of Russian officers. He was of Polish nationality, a citizen of the Soviet Union, and a member of the Red Army. Walters told Gladnick that he had been Chief of Staff of the Chinese Red Army, and had planned and executed various military operations there.

The Respondent's witness Wolff acknowledges hearing of a guerrilla warfare school in Spain, but states he never sent any Americans to it.

Based on the foregoing evidence it is found and concluded that the ALB in Spain was dominated and controlled by the CPUSA and the Comintern; that its members were subject to and the recipients of Communist discipline; that [fol. 53] dissidence by ALB members from Communist policies in Spain was not tolerated and was severely punished;

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* Right name Swierczewski, one-time commander of the 35th Division of which the ALB was a part, and later Vice Minister of National Defense of Communist Poland.

that a political commissar system organized under the leadership of Comintern agents and completely dominated by Communists functioned throughout the International Brigades, including the ALB, for the purpose of maintaining the political reliability of troops from the Communist viewpoint and of dispensing Communist indoctrination; that the official organ of the ALB was controlled by the CPUSA and reflected Party policy; that ALB reading material was restricted to predominantly Communist publications, and that other publications were censored by Communists as a means of maintaining Communist ideology among ALB troops; that mail of ALB troops was checked to ascertain political dissidence; that a secret police operated within the International Brigades to enforce Communist discipline and that ALB members functioned within this secret police organization; that ALB members recruited agents for Soviet intelligence from among Americans in Spain; and that ALB members were trained by Soviet personnel in Spain and functioned as Soviet agents, all in furtherance of and pursuant to the policies and objectives of the world Communist movement then functioning through the organization denominated as the Comintern.

Furtherance of World Communism Via Spain

The Petitioner's evidence clearly establishes that the world Communist movement was materially aided and advanced by the CPUSA through the ALB as an aspect of the Party's participation in the international anti-Fascist united front. This is shown by evidence establishing: (1) the significance of Spain to the Soviet Union as leader of the world Communist movement and the recognition of and active participation of the CPUSA and the CPS in furtherance of such interest; (2) the conformable functioning of the CPS within the Soviet Union's international anti-Fascist united front aided by the Soviet Union and the CPUSA among other national Communist parties, with the resultant increase in its membership, power, influence, and prestige; and (3) the conformable functioning of the CPUSA as a participant in the anti-Fascist united front in aid of the CPS and the Soviet Union and the utilization

of Spanish fascism as a united front shibboleth to increase its influence, power, and prestige in the United States. The evidence relating to activities in each of the foregoing functional areas will now be set forth in the order indicated.

[fol. 54]

Soviet Interest Advanced in Spain by CPUSA and CPS Through the United Front

The Petitioner's witnesses Budenz, Herrick, Horan, Lautner, and Maken establish that as a result of the election of a popular front government in Spain in 1936, in which the CPS along with a number of other Spanish political parties participated, the world Communist movement showed an increasing degree of interest in Spain. Spain became particularly significant from the Communist viewpoint as it afforded one of the first instances where a Communist Party in Western Europe was in a position to participate in the administration of a government.

As shown p. 19, *supra,* the Comintern's united front tactic was applied to Spain on an international scale after the Franco rebellion. Budenz also establishes that the anti-Fascist united front movement, which the Communists aim to dominate and eventually control, was used to advance the Soviet's interest in Spain, the objective being to make Spain Communist controlled. In this connection, the term "Fascist" or "fascism" * is carefully and designedly used to label the chief enemies of Soviet Russia (Fascist or otherwise), and to serve Communist interests, in an endeavor to win them as many allies as possible through its application at any specific moment. This technique is the very center of Communist strategy and is grounded on Stalin's *Foundations of Leninism* which teaches that "With the van-

* Budenz explains that Communists interpret anything to be Fascist in the final analysis which is against communism. He testifies that the cry of fascism in the Communist movement changes according to what serves the interests of the Soviet Union, and cites Molotov's reference in connection with the Hitler-Stalin Pact, that "Fascism is a matter of taste." This is further discussed p. 141, *infra.*

guard alone victory is impossible."* (Tr. 2678), and hence it is necessary for Communists to mobilize the support of thousands who are not Communists. In order to do so, it is necessary to raise issues which do not involve pitting communism against something else and attempting to rally masses in support of communism, but rather involves rallying them against or around another ostensible objective. [fol. 55] The real objective is always to get the maximum number of supporters that can be moved along the path of the Communist line for any particular period. "Anti-fascism" and "Spanish fascism" ** were used pursuant to this strategy and tactic as a means of inducing hundreds of thousands of supporters to follow the Communist line for Communist purposes, leading ultimately to Communist domination.

In this connection, Lautner establishes that in developing the united front here, the CPUSA attempted to claim for itself that it was conceived and built upon the best democratic traditions of America; namely, the traditions of Jefferson, Paine, Lincoln, and others, and this whole tactic pervaded its united front policy.*** The immediate

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* See also p. 73, *infra*, where Dolores Ibarruri, speaking for the Party of Spain, emphasizes this principle which requires that non-Communist allies must be gained through operation of the united front tactic.

** It is pertinent to note that soldiers at the 15th Brigade Training Camp on January 1, 1938, took the following pledge: "We pledge to fight and carry on until the heart of fascism has been destroyed throughout all the world. We pledge to the working class of all the world that we will carry high their banner." (Pet. Ex. 55)

Also that graduates from the 15th Brigade Officers Training School took the following pledge on January 16, 1938: "We pledge an eternal fight against fascism wherever it may be found and in whatever guise it may hide; we pledge to the international working class that we will fulfil the trust they have placed in us; we pledge to the working masses of our countries, our mass organisations, that we will carry out the missions for which they sent us to Spain." (Pet. Ex. 56)

This pledge was signed by some members of the ALB who later became members of the Respondent.

*** While attending the Party's Chicago Workers School in 30 Wells Street, in the summer of 1937, Horan took the course "Amer-

practical purpose of the united front was to defeat fascism and then to advance onward toward the Soviet type of "Socialist reconstruction of society" which involves forceful revolution,* see p. 18, *supra.*

[fol. 56] The Soviet interest in Spain was through the anti-Fascist united front, first to advance its influence there, embodied in the CPS, and thence into Latin America, in order to curb the so-called Dollar Republics; and, secondly, to serve as a means of protecting Soviet Russia itself.**

This Soviet interest was constantly referred to by Browder and Minor and others reporting on the Spanish situation in Budenz' presence. It is reflected in the CPUSA's slogan which for years called for the defense of the Soviet Union. The objective to advance communism in Spain was underscored by Browder's stated adherence to Stalin's teachings in *Foundations of Leninism,* that the period had arrived for the world revolution in which the dictatorship of the proletariat built in Soviet Russia was to be used as a base for the overthrow of imperialism in all other countries.

The CPUSA's assignment to advance the Soviet cause in Spain was repeatedly spelled out at National Committee and Politburo meetings as was the defense of the Soviet Union as the citadel of "peace and democracy," and the necessity for the spread of the world revolution was stressed both in reports and by quotations from Stalin's works.

Maken shows that the policy of the CPUSA at that time in relation to Spain and the world Communist movement

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ican History" as Browder had urged Party members to learn American history and use it in phrasing Party propaganda.

The use of "Lincoln" and "Washington" with respect to the American Battalions in the International Brigades should also be considered in this light. See also p. 59, *infra,* where the Comintern indicates to the CPUSA the use of these American traditions.

* The United States Government in Party contemplation is the leading imperialist government of the world which must be destroyed in order that Socialist reconstruction can be achieved.

** Defense of the Soviet Union as an aspect of the Party's participation in Spain is also shown at pp. 62, 79, 82, *infra.* The significance of Spain to Latin America from the Communist viewpoint is also shown at p. 168, et seq., *infra.*

was to render it service in the implementation of the Soviet Union's foreign policy, in order to advance Soviet interests. According to Maken, the basic ultimate policy of the world Communist movement, headed by the Soviet Union and including the CPUSA and the CPS, was to carry out a program of world conquest.

Herrick testifies that the objective of the Comintern in Spain, while in alliance with the other political parties fighting Franco, was to obtain dominance for the CPS so that, upon the defeat of Franco, the CPS would dominate the Spanish government making it a satellite of the Soviet Union.

It is established that the CPUSA's participation in Spain through the ALB involved two levels of purpose; nationally, to fight fascism and thereby show solidarity with the [fol. 57] Spanish people, for propaganda purposes as a method of building up the CPUSA; internationally, to aid the CPS as an integral part of the world Communist movement, to enhance its power and establish it as the dominant force in the Spanish Republican government to serve the ends of the Soviet Union.

This testimony concerning the use of the International Brigades and the anti-Fascist united front in the Spanish Civil War, as part of world Soviet strategy to advance its own interests, is also borne out by considerable documentary evidence.

For example, in May 1938, the Executive Committee of the Comintern, spokesman of the Soviet Union, issued a manifesto (Pet. Ex. 5) which sets forth clearly and precisely the international united front strategy emanating from Moscow and gives explicit directions to its various Communist Party components throughout the world concerning this policy which is here revealed as cognate to arousing the people under "so-called democratic governments" to "rise up everywhere":

> "Proletarians and working people of all countries!
> "... In this year 1938, the May Day review of the revolutionary forces of the international proletariat takes on a special significance, full of mititancy.

* * *

"Abandoned by bourgeois-democratic governments, the Spanish people staunchly defend their democratic republic against the combined forces of world reaction. Defending their liberty, they defend the cause of the whole of advanced and progressive mankind.* (P. 411)

• • •

"Uniting the struggle internationally, you will secure new, unparalleled strength. *Rallied together in a united international front, the working class will be-*
[fol. 58] *come the center of attraction for all anti-fascist forces of the world. By its unification it will acquire allies, by demonstrating its strength it will revolutionize them and fill them with confidence in victory. And then the people, misled by the policy of the so-called democratic governments, by the policy of conniving with fascism, will realize their own might, and rise up everywhere against the fascist scoundrels. Then the peoples of Germany, Italy, Japan, sensing the isolation and bankruptcy of the fascist gangs, will take their taskmasters by the throat and then the People's Front movement against fascism and war can assume** an unparalleled scope throughout the world.* [Emphasis added]

"It is to this path of struggle that the Communist International calls the working people . . ." (P. 413, Pet. Ex. 5)

The Comintern is explicit in here calling for action by the CPUSA as a functional part of the world Communist movement which, as will be later show herein (see p. 168, et seq., *infra*), is the root of its policies concerning Spain and its use of the anti-Fascist united front, which have since remained substantially unchanged (with the exception of the Hitler-Stalin Pact period):

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* This slogan with respect to Spain was put forth by Stalin.

** Cf. in this regard the testimony set out at pp. 15, 56, *supra*, concerning the necessity to spread the world revolution as part of international Communist policy.

"Comrades!

"Come out on to the streets on May First! Take your places in the fighting column of an international united workers' front, of effective aid to the Spanish people.

"Arms for the Spanish people!

"Demand, workers of France, glorious descendants of the Paris Communards, that the blockade of Republican Spain be immediately lifted . . .

"Workers of Britain! Compel your ruling classes to end the policy of support for fascist brigandry and [fol. 59] the policy of hostility toward the land of socialism, toward all the peoples fighting for their liberty and independence . . .

"Demand, workers of the United States, a policy of curbing the fascist violators of world peace, a policy worthy of the traditions of Lincoln and Washington.* Demand the immediate lifting of the ban on the export of arms to Spain and China.

• • •

"Anti-fascists of all lands! Demand that the forces of German and Italian intervention be driven out of Spain, the Japanese aggressors out of China, the German fascist gangs out of Austria.

"Demand the application of economic, political and other sanctions against the fascist miscreants.

"Working people, join forces with the proletariat in a mighty People's Front against fascism and imperialist war.

"Peoples of Europe, America and Asia! Join with the great people of the Soviet Union in building the international peace front against the fascist cutthroats, the incendiaries of wars of plunder.

"Proletarians!

"A united working class of the capitalist countries allied to the workers of the land of socialism is invincible. In your unity with the mighty Soviet people lies the guarantee of the crushing of fascism. . .

• • •

* Cf. Lautner's testimony concerning Communist use of American traditions in applying the united front tactic.

[fol. 60] "Long live the People's Front of struggle against fascism and war!

"Long live the U. S. S. R.—the bulwark of socialism, peace and liberty!

"Long live the alliance of the working class in the capitalist countries with the working class of the land of socialism!" (P. 414, Pet. Ex. 5)

Andre Marty, supreme head of the Brigades and a member of the Comintern's Executive Committee, writing in the *Volunteer for Liberty* for November 1, 1937 (Pet. Ex. 83), is clear in his emphasis that the International Brigades were a phase of the united anti-Fascist front of the "World Party of Bolsheviks" put forth by Comintern spokesman Dimitrov:

"The moment has come to say what that irresistable force is which is rising among the noble Spanish people and will give them victory.

"That force is the antifascist spirit and the will to unity of the workers, gathering together and urging forward the whole of the people. (P. 10)

* * *

". . . The Communists can be proud that in these tragic moments, they, who have constituted the majority of the workingclass group in each unit . . . have been equal to the great historic task which faces them.

"In these twelve months of heroism they have been worthy members of that revolutionary workers' Party of a new type, the world Party of the Bolsheviks. They are worthy sons of that Party, which formed and led by the greatest minds of our times, Lenin and Stalin, has overthrown the old world and is about to celebrate with joy 20 years of real liberation for a whole people. All are worthy of that great Antifascist and Communist fighter, George Dimitrov, whose magnificent example of proletarian firmness and vision, [fol. 61] *of political realism and antifascist hatred* in face of death, put in check the butchers of the German people, and has been and *remains their guide at each*

stage in the struggle." [Emphasis added] (P. 11, Pet. Ex. 83)

In this same issue of the *Volunteer for Liberty* (Pet. Ex. 84), Luigi Gallo, Commissar Inspector of all International Brigades, in explaining the decree making the Brigades an integral part of the Spanish Army, shows further that the Brigades were a politically significant instrument of the "World People's Front" (united front tactic), and that cooperation with and support of the Republican government in Spain were immediate objectives of this tactic:

> "In our Brigades are gathered together the best sons of all the peoples. *The Brigades are the World People's Front fighting by the side of Spain to defend the people's liberty and independence.*
>
> "*It is to express this highly political significance* that the Decree determines that all the Volunteers for Liberty *should wear as their distinguishing mark the three-pointed star which is the symbol of the World People's Front.**
>
> "The Decree also lays it down that our Brigades form an integral part of the Spanish People's Army.
>
> * * *
>
> "*A regular army and a unified command*—these are the essential conditions for victory in the armed struggle against fascism.
>
> "Because of this we receive with enthusiasm all those measures in the Decree which tend to make our Brigades more and more integral parts of the Spanish People's Army. [Emphasis added] (Pet. Ex. 84)

[fol. 62] Browder's address to CPUSA functionaries in December 1937 (Pet. Ex. 6), shows the Party's conception of the war in Spain as a war of "national liberation" and places it in world perspective with the war in China:

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* The three-cornered star significantly enough is also the symbol of the Respondent appearing on letterheads, publications, and lapel pins and evidences the coordinate relationship of the Respondent as an instrument for the continuation of the united front tactic.

"The war in Spain is a part of the world-wide offensive of fascism against all peace-loving and democratic peoples. *It is directly connected with the war in China, invaded by the Japanese fascist military clique in power. Both the Spanish and Chinese peoples are conducting a defensive war against aggressors. By their struggles they are defending the cause of peace of the whole world* against the violators of world peace—Germany, Italy and Japan. *They are conducting a national-liberation war against foreign bandits . . .*" [Emphasis added] (Pp. 3-4)

Browder goes on to show that defense of the Soviet Union is, as Budenz establishes, an all-pervading consideration in its activities in Spain and elsewhere:

"If German and Italian fascism are victorious in Spain, and Japan crushes China, this will surely only open up a series of wars of conquest and aggression on the part of the insolent fascist states all over the world . . . *It would mean a general war of the so-called 'Anti-Communist' Alliance for the redivision of the world. It would mean war against the Soviet Union—the bulwark of peace, liberty, and socialism.* It would mean the quick rise of a powerful fascist movement in the United States, with the force of Wall Street's money behind it. (P. 4)

"*These are the inevitable results of the fascist victory in Spain and China. Therefore the struggle against the German and Italian intervention in Spain, and the Japanese invasion of China, is a struggle for maintaining peace in the world . . .*" [Emphasis added] (P. 5)

[fol. 63] Browder's statements are further evidence that the efforts on behalf of so-called "peace and democracy" refer to Soviet "peace and democracy" and not to peace or democracy in the American tradition:*

* Petitioner's witness Lautner establishes that the use of the words "democratic traditions and progressive aspirations" by the

"The Communists are everywhere steadfastly in the forefront of the defense of Spain. This is a part of our whole line of defense of democracy and peace. It is applied to the defense of democracy in the United States. (P. 11)

• • •

"This is true whether the democracy is the incomplete, limited and fragmentary democracy of England, France and the United States under capitalism, or whether it is the more fundamental, far-reaching and profound democracy of socialism in the Soviet Union. Because the Soviet Union has achieved the greatest democracy of all history, there is found the surest support of these democracies that are fighting for their life against fascist invasion." [Emphasis added] (Pp. 12-13, Pet. Ex. 6).

Based on the foregoing, it is found that the anti-Fascist united front was promulgated by the Soviet Union as leader of the world Communist movement, and utilized by it with reference to Spain in one aspect of its international application* as a means of furthering the Soviet interest in Spain, and for the ultimate strengthening of the Soviet Union's power; that both the CPS and the CPUSA through the International Brigades recognized this interest and actively participated in furtherance of it.

[fol. 64]

CPS's Functioning Within the United Front

It is established that the Communist Party of Spain was a section of the Communist International, and that Dolores Ibarruri, known as La Pasionaria, and Enrique Lister, Commander of the Fifth Communist Regiment, and later of International Brigades troops, were members of its Central Committee; that Jose Diaz was General Secretary

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Party meant to him, as a high functionary, the Party policy to achieve the Soviet type of socialism through the united front tactic; see also p. 18, *supra*.

* As will be later shown this also applied to China.

of this Party, and that Modesto, a commander of a corps under Lister, was a prominent Spanish Communist. Vicente Uribe and Jesus Hernandez, Minister of Agriculture and Minister of Propaganda and Education in the Republican government, respectively, were CPS members. These names were constantly in the conversation in the ALB.

Soccoro Rojo, organized by the CPS, was the Spanish section of the Comintern's International Red Aid. All members of the ALB were asked to join the Soccoro Rojo, and Hecht, Horan, and Herrick, among others, did so. About one-third of Hecht's base pay was deducted as a contribution to Soccoro Rojo and he doesn't recall whether a pledge was signed authorizing the deduction or whether it was autocratically done, but he states that such a contribution was fairly uniform throughout the ALB. He explains that it was compulsory to support Soccoro Rojo to the extent that a "dim view" would have been taken of anyone who did not.

The record amply establishes that ALB members functioned as members of and in conformation with the Communist Party of Spain while in Spain, and that they were, in fact, recruited into the CPS.

ALB members were informed about March of 1938, that the CPS was now openly recruiting members, which it had done covertly before because of an agreement with other political parties to cease such activity during the war.

Gladnick joined the CPS in April 1938, pursuant to instructions from the Political Commissar of the Russian group, Fotchomkov, who stated that all who were not members of the Communist Party of the Soviet Union were to join the Communist Party of Spain.

Horan joined the CPS in the latter part of September 1938, in Marsa, after Harold Smith, a Party functionary and ALB Headquarters Political Commissar, informed him of the order to join. Others in the ALB had joined prior to this time. Horan was also made an honorary member of the Gastronomical Workers Union of the UGT which was a CPS-controlled union, and issued a membership card (Pet. Ex. 91) showing his dues were paid.

[fol. 65] Hecht establishes that membership in the CPS was a matter of prestige, of being "one of the boys," so to

speak. He was admitted in late February 1938, and belonged to a unit which was made up of fellow ALB members, all having previously been CPUSA members.

Milton Wolff, ALB Commander and later the Respondent's perennial Commander, was a member of the CPS.

Announcements of Spanish Party meetings were made in the ALB military formations, either by a political commissar or a Party member.

Robert Minor, a Politburo member, in his report to the June 1937 plenary meeting of the CPUSA's Central Committee (reprinted in *The Communist*, August 1937, Pet. Ex. 4), clearly shows that the CPUSA and the CPS regarded the war in Spain as but a phase of a revolution to advance socialism there:

> "...'You may win the war and lose the revolution' became a stock phrase spread about by the Trotskyite counter-revolutionaries for this sort of activity.
>
> *"The Communist Party has branded this 'slogan' of cynicism as the yelping of the dogs of counter-revolution...* The Communist Party answers: *To win the war is to win the revolution! The revolution cannot be separated from victory in the war. Only by carrying on the war against the Spanish fascists and the German and Italian invaders can this social transformation be developed and pushed deeper. All attempts to weaken the people's war, all attempts to break up or disrupt the People's Front government, all attempts to monger phrases about 'socialist revolution' in order to break the workers away from the People's Front, aid and abet fascism and are counter-revolutionary.* [Emphasis added] (P. 700, Pet. Ex. 4)

This exhibit evidences further the importance of the political structure of the Popular Front government in Spain and makes it clear that winning the war, unified military command, etc., were but means to an end aimed at furthering the CPS:

> [fol. 66] *"It was in this situation that the Communist Party raised the slogan of a 'Regular Army of the People' and the slogan of 'Unified Command'.* These

slogans were so obviously the key to the situation that both soldiers and officers seized upon them and put them into effect locally so far as this was possible. Especially in Madrid, where the Communist Párty has 60,000 members, this was done, within the limits of the metropolitan area . . . " [Emphasis added] (P. 700, Pet. Ex. 4)

Jose Diaz, CPS General Secretary, in a letter to a plenary meeting of its Central Committee (Pet. Ex. 90)* shows that the CPS, operating within the people's front in Spain in conformation with the world Communist movement, viewed the civil war as part of the struggle for a "democratic revolution" and had, as a result of the united front, become a dominant force in Spain:

" . . . *we are the greatest, the most united and the most disciplined political force in the whole of Spain. And furthermore it is because we are an integral part of the world Communist movement—that mighty Army of fighters for freedom, peace and Socialism, which raises aloft its banners of struggle over the whole earth.*

" . . . *Our responsibility is a historical fact bound up with the development of our democratic revolution and the war . . .* " [Emphasis added] (P. 5, Pet. Ex. 90)

Similarly, CPS Politburo member Dolores Ibarruri (La Pasionaria), in reporting to its Central Committee (Pet. Ex. 90), emphasizes the leadership of the Soviet Union and makes clear that the Party's exhortations concerning discipline refer primarily to *political*, not military discipline; further she shows that support of the Spanish Republican government, of which the Communists claimed to be the most powerful and united force, was but a necessary and logical objective of the united front tactic through which the CPS was carrying out its "revolutionary and progressive mission":

* Pet. Ex. 90 was published by the CPS in 1938, and given to Horan while with the ALB in Spain.

[fol. 67] *"The Soviet Union,* with its steadfast peace policy and its firm stand in the face of fascist aggression, *is playing a decisive role in this constant growth of the fighting forces against war and fascism over the whole world of which the helmsman of our glorious Communist International speaks . . .* " (P. 28)

" . . . *our working-class is sufficiently developed ideologically and politically, to be able to understand that it is carrying out its revolutionary and progressive mission today . . .* (P. 39)

"Our pride at feeling ourselves to be Communists should be expressed by displaying at all times the most iron discipline, conscious discipline to the Party line and to the orders of the Government which the Party supports without any kind of reservations. (P. 80)

• • •

"Care for Party discipline is an absolutely essential condition. This political discipline consists in carrying out the Party line and fulfilling the tasks of Party membership . . . (P. 93)

• • •

"True to our Bolshevik tradition, we Communists will give more and yet more for victory. We shall win the war, sure of the correctness of our political line . . . " [Emphasis added] (P. 93, Pet. Ex. 90)

Robert Minor's Report to the New York Party's 10th Convention in May 1938 (Pet. Ex. 12), shows the Communist world outlook concerning the war in Spain as part of a world people's front for the defense of the "fatherland," emphasizing the Leninist policy of the Spanish party:

"In this war the Communist Party of Spain is a vital part of the defense of the nation.

[fol. 68] "In a whole series of countries the national existence and independence are under attack by the fascists, and in all cases the fascist attack is connected with and supported by a foreign fascist or

military state. *The democratic mass becomes the defender of the national existence and independence, the defender of the fatherland. Would anyone dispute that this is true in Spain? Or in China? Or in Mexico? Or in Czechoslovakia? Or in Austria? Or in France? In all of these cases the Communists stand with these masses and aggressively in the forefront lead these masses in a definite struggle for national existence* . . . (P. 235)

"The Communist Party of Spain, by its clear and bold Leninist policy, has from the beginning been, of course, an indispensable part of the defense of Spain. Clear-headedly it has stood at all times stubbornly against all efforts by pseudo-revolutionary phrasemongers to turn the masses away from the consistent policies of the People's Front and the defense of the fatherland at all costs." [Emphasis added] (Pp. 235-36, Pet. Ex. 12)

As shown, the overt policy of the world Communist movement was that of a broad united front which involved forming an alliance with all who would fight against fascism. Within such a united front Communist tactics involve working to obtain control of such an alliance. In accordance with this policy, the CPS followed a so-called people's front policy in that it had an alliance with Socialists, Anarchists, Republicans, and a rival Marxist Party called the POUM (United Marxist Workers Party), and all other so-called "bourgeois" parties, but while maintaining this alliance it attacked by devious means the other parties and party leaders.*

[fol. 69] As an aspect in aid of such operations, Herrick states that Soviet-supplied arms were refused to the

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* An example of such an attack is shown by the CPS's position against the POUM which was universal throughout the world Communist movement, discussed herein pp. 69-71, 77, *infra*. Budenz establishes that according to official reports of Browder and Minor, the CPS had influence amongst other political parties there, particularly the so-called "Left Socialist" groups which it was attempting to use to further Communist purposes.

Anarchist troops unless they were willing to adhere to Communist policies and to adhere to the leadership of the CPS. This is also shown by Gladnick who was in a position to know the political and military situation there, from his vantage point in the Russian mission where he acted as interpreter for the Commander of the mission, General Gregarovitch (also known as Marshal Stern), when he dealt with the Chief of Staff of the Loyalist Army, and from his conversations with the top Russian officers in Spain.

Russian technical arms were delivered in Cartaginia, Valencia, Alicante, and Barcelona, Spain. Gladnick on many occasions, as a member of the Russian mission, took over tanks at these ports and delivered them to Spanish military units. Russians in the artillery likewise took over incoming artillery, and those in the air corps took over planes.

Gladnick discussed with the Russian officers attached to the other units the problem of seeing that Russian technical arms were sent to reliable people. While with the Russians, he was in action on the Toledo, Guadarama, Guadalajara, Brunete, and Belchite fronts and participated in the entire action on the Aragon front from Huesca to Teruel. In all these actions Russian tanks were in the hands of the Communist troops as were the better type of Russian artillery and airplanes.

Largo Caballero, Prime Minister of Spain, objected to Russians controlling the distribution of technical arms sold by the Soviet Union to Spain and as a result the Russians delayed delivery, blamed Caballero for the delay, and organized pressure around this and other issues such as the POUM incident discussed below, which resulted in his removal.* He was eventually succeeded by Prieto.

Based on his knowledge as a Party member, upon matter in the *Daily Worker*, *Mundo Obrero*, *Workers World* (also an official organ of the CPS), addresses by Dolores Ibarruri and Jose Diaz, and instructions given at political commissar meetings, Horan establishes that the CPUSA and the CPS characterized the POUM as a "Trotskyite"

* See also p. 41, *supra*, where the Comintern attacks both Caballero and Prieto for opposing the Commissar system.

party and circulated the story that Andre Nin (head of the POUM) had escaped from prison, along with members of [fol. 70] his staff, with the active cooperation of the then Premier of Spain, Largo Caballero.* It was a Communist tactic within the united front to use such statements and incidents to attack members of the Spanish government whom the Communists desired to replace. As stated, the Party's use of the POUM controversy also contributed to the replacement of Caballero as Premier.**

Earl Browder's report to a meeting of CPUSA functionaries in December 1937 (Pet. Ex. 6), also shows the uniformity throughout the world Communist movement of the use of the POUM controversy to discredit Caballero:

> "*One important guarantee of victory of republican Spain is its firm hand in suppressing the Trotskyite-POUM agents of Franco* . . . One year ago, they even had their representatives within the government and enjoyed full freedom of action for their treasonable and wrecking work . . . *It was one of Caballero's greatest crimes that, while Premier, he dallied with these criminals and even took them under his protection. But today they are officially recognized enemies of the Republic and of the people.*" [Emphasis added] (P. 8, Pet. Ex. 6)

At a meeting of ALB political commissars at which Horan was present, a reporter for the London *Daily Worker* gave his interpretation of the trials of POUM members in Barcelona, who had been found guilty of having helped Nin to escape, and persons such as Caballero and Prieto and others whom the Communists wanted to remove from the government in Spain, were discussed. While in

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* While at Figueras around the 11th of October 1937, a Brigade political commissar told Horan that he had permitted Andre Nin, head of the POUM, to escape and then shot him.

** The Respondent's own witness, General Asensio, bears witness to this tactic of the Party which as set out p. 71, *infra*, charged him with being a traitor as a result of a military defeat and contributed substantially to his imprisonment for over eight months.

the International Brigades prison at Figueras, Horan saw persons imprisoned there allegedly for the crime of helping POUM leader Andre Nin to escape.

Robert Minor, as a CPUSA representative in Spain, at a meeting, attendance at which was compulsory upon ALB [fol. 71] members, explained the Party's position on the POUM uprising in Barcelona in which a large number of POUM members were killed, stating that they were "in cahoots" with the Fascists and Trotskyites and were traitors attempting to destroy the Communist cause in Spain. G. Marion, a reporter for the CPUSA *Daily Worker*, discussed Party policy and the work of the Soviet Union in Spain with the ALB, disparaging the other parties in the people's front government.

The Respondent's witness, General Asensio, as a military commander, personally had trouble with the political parties in Spain, stating that all wanted to become the dominant party. He had particular trouble with the Communist Party of Spain, however, which through its newspapers was especially vociferous in accusing him, along with the President, after the fall of Malaga, with being traitors. As a result, Asensio was arrested and imprisoned for over eight months but was finally acquitted by the Spanish Supreme Court and restored to full military honors. He explains that this was a political matter not directed against him personally, but rather against the President of Spain.

In carrying out Comintern objectives, the ALB political commissars, as Party members, undertook to convey an understanding of the world Communist movement's political line from day to day, and in so doing criticized the other parties in the popular front government in furtherance of making the CPS the dominant party in Spain. There were innumerable discussions among the political commissars and the troops to the effect that after victory of the Republican government, the International Brigades would then be used to give the Communist Party of Spain dominant political power.

With respect to sovietizing Spain, it is clear from the record that this was definitely an objective of the world Communist movement, and that the CPUSA and the CPS

operated in furtherance of this objective. This is borne out by Pet. Ex. 238, a Party publication entitled *Americans in Spain,* which provides:

> *"In Spain, a Republic of a new type will be established* which will unite the people and provide material guarantees for their future happiness. There will be no more feudal lords to serve. There will be no more greedy bankers and capitalist masters to exploit the workers . . .
>
> *"This will be a great step forward to Socialism.*
>
> [fol. 72] *"From Democracy, the Spanish people will march forward to Socialist freedom and liberty."** [Emphasis added] (P. 32, Pet. Ex. 238)

Similarly, Politburo member Robert Minor, in reporting on Spain to the CPUSA's Central Committee plenum in June of 1937 (Pet. Ex. 4), states:

> *"The foundation has now been laid for a powerful war industry controlled by the people's government.* Governmental measures have deeply undermined and partially destroyed the material basis for fascism. In most cases the enterprises abandoned by the fascists and the reactionaries are in the hands of the state and controlled by the workers.
>
> "A parliamentary democratic republic *of a new type* has now come into being. *This government, working in a collective manner, is consolidating and unifying all of the people's forces—the workers, peasants, middle classes, republicans—against fascism, behind the Negrin government.***
>
> *"Simultaneously with the military work, important social and economic reforms have been carried out. The land of the big landowners and the big holdings of the church have been nationalized and given for per-*

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* See p. 18, *supra,* re Communist use of "Democracy" and "Socialism," which is borne out here by showing "Socialist freedom" as an advanced state from "Democracy."

** It is also established that the CPUSA supports the Negrin Government in exile as does the Respondent.

manent use to the toiling peasants and agricultural workers. All possible state help is given to collective farms and a reasonable price ensured for their products. The political as well as the economic power of the church has vanished.

"The banks and the financial wealth of the country are controlled by the state and workers' organizations . . ." [Emphasis added] (P. 708, Pet. Ex. 4)

[fol. 73] Horan attended a number of CPS meetings where the activities of the Communist Party of Spain were explained. At one such meeting outside of Marsa, Spain, a local CPS leader explained how they were establishing collective farms.

Bill Lawrence* in the pamphlet *Next Steps to Win the War in Spain,* January 1938 (Pet. Ex. 6), published and distributed by CPUSA, also illuminates the use of the united front tactic by the Spanish Party and quotes a manifesto wherein it recognizes the need for this tactic to advance itself to a dominant position, using the anti-Fascist war as the entering wedge:**

"The Communist Party of Spain . . . guides its work and formulates its policies continuously and consistently along the path of endeavor to unify all anti-fascist forces of Spain.

"In its famous manifesto of September 15, the Party Central Committee declared:

"'*Our Party would commit a grave error if it believed that it alone, with its own forces, could solve the serious problems before the Spanish people.* The victory over fascism ought to be a victory of all the Spanish people. All anti-fascist forces ought to col-

* Formerly Political Commissar of the Military Base at Albacete, Spain, Long Island Party Section Organizer, later a member of the National Committee and Executive Secretary of the New York Party.

** See p. 54, *supra*, concerning Stalin's teachings regarding the necessity that Communists utilize allies.

laborate to obtain it. In the unity of all these forces resides precisely the supreme guarantee of our triumph.'

"Logically continuing this policy, the Party directs the comrades who are in military or political command to:

"'. . . accentuate the relationships of comradeship and fraternity with commanders of other parties and organizations.' (Pp. 17-18).

[fol. 74] "The Spanish Communist Party directs its comrade commanders not to try to prove a point or polemize, but to remember the main issue—Unity and Win the War.

"This approach to unity is not limited to the working class organizations but to all anti-fascists who are willing to fight for the freedom and democracy of the Spanish people." (Pp. 18-19)

". . . Today more than one hundred thousand Party and Y. C. L. comrades are in the armed forces of Spain . . .

* * * *

"Because of its policies and heroic deeds, the Communist Party is beloved by the Spanish people. *Its influence is growing hourly. From a party of 20,000 at the outbreak of the insurrection, the Communist Party of Spain has grown until it numbers today half a million fighters in its ranks.*" [Emphasis added] (Pp. 18-19, Pet. Ex. 6)

That the Party in Spain has thus been advanced in size and power is made clear by Minor's Report to the CPUSA's Central Committee (Pet. Ex. 4, *supra*):

"The growth and prestige of the Communist Party [of Spain], which has won its place by its unbounded heroism and by the correctness of its proposals, proven in the fires of struggle, is an assurance that the *people's revolution* will proceed* victoriously. *It has*

* This again shows that the war was regarded as but a phase of the Communists "people's revolution" in Spain.

grown from 35,000 in February, 1936, to more than 250,000. The Socialist and Communist Parties are coming closer to the time when a united party of the proletariat can be formed throughout Spain. The revolutionary powers of the people are leading toward victory." [Emphasis added] (P. 708, Pet. Ex. 4)

[fol. 75] Further, Earl Browder told a meeting of CPUSA functionaries on December 9, 1937:

". . . And not the least element of strength of the Spanish Republic, the Communist Party, has grown to 350,000 members, the Socialist Party has also grown largely, and both parties are solidly united behind the government and moving toward amalgamation into a single party." (P. 8, Pet. Ex. 6)

This is also emphasized by the CPUSA in Pet. Ex. 238, *supra*, as follows:

"The Communist Party of Spain has most loyally cooperated with the People's Front Government. It raised the proper slogans in order to bring about speedy victory. *The Communist Party has demanded a strong disciplined army, a unified military command, nationalization of industries to insure the necessary war supplies, discipline at the front and rear, and not to antagonize the peasants by forced collectivization nor the middle class by unjustified seizures of property.*

"Thousands of Communists and young Communists have been killed in battle. *Yet the correct position of the Communist Party has resulted in its membership growing from 30,000 before the fascist rebellion broke out to 300,000 to-day.*" [Emphasis added] (P. 31, Pet. Ex. 238)

A number of the Petitioner's witnesses also testify that the Communist Party of Spain had a relatively small membership at the time of the Franco rebellion, but during the war became one of the largest parties in Spain.

The Respondent's witness Asensio shows that in September 1936 (when diplomatic relations were restored between

Spain and the USSR), the CPS was weak politically, but that in October of that year Communists Jesus Hernandez and Vicente Uribe became members of the cabinet.

He further testifies that the Republican government brought arms, through a commission set up in Paris, from Czechoslovakia, Belgium, Norway, Mexico, Russia, and [fol. 76] other countries; that upon receipt of Russian arms in Spain, possession was taken over by the Spanish Government and distributed according to the necessities of the war; that the Government's orders were to put the arms in the hands of the Chief of any division or army corps, who would make further distribution; and that there was no distinction made between military divisions or corps in distributing arms at this level.

Asensio acknowledges that Russian advisers were used as aviation instructors; and Russian tanks were used and Russian instructors taught their operation, but asserts the tanks were operated in action by Spanish troops.

He knows of no purpose of the International Brigades in Spain other than a military purpose, and he testifies that these foreign troops to his knowledge did not engage in political intrigue against the Spanish Government.*

It is found and concluded that the CPS functioned as a part of the Communist International united front in Spain and was aided by the Soviet Union and the CPUSA in so doing; that its objective was to advance the Soviet Union's interest in Spain by ultimately making Spain a Communist-controlled nation; and that pursuant to the Communist united front tactic and in furtherance of the foregoing objective, the CPS was greatly enhanced in power, influence, and prestige in Spain.

CPUSA's Functioning Within the United Front

Showing the CPUSA's perspective concerning Spain as an integral part of the Comintern's world united front and the prominence therein of the "fortress of progress, democ-

* This is somewhat at variance with the substance of his testimony under cross-examination, set out p. 71, *supra*, that the CPS in a political maneuver against the President charged him with being a traitor which resulted in his imprisonment and trial.

racy, and peace, the Soviet Union,"* is Earl Browder's report delivered to a plenary meeting of the Party's Central Committee in June 1937 (reprinted in *The Communist*, July 1937, Pet. Ex. 3), at which Lautner was present, wherein he stated:

[fol. 77] "The swift rise in activity of a broad progressive and democratic movement in the U.S.A. . . . . realized, even sooner than we had thought, those perspectives which we set at the December Plenum of our Central Committee. This fact becomes of major world importance in the setting of the world struggle between the forces of fascism and war on the one hand, and those of democracy and peace on the other, because it *gives grounds for belief that the U.S.A. can be made one of the strongholds against world reaction, along with the People's Front movements in France, Spain and China, and in cooperation with the greatest fortress of progress, democracy, and peace, the Soviet Union.*

"...The smashing of the Trotskyite wrecking and espionage agencies in the Soviet Union, the halting of the fascist offensive before Madrid, *the inauguration of the new Soviet Constitution—a high mark of democracy in world history—the smashing of* Mussolini's brigands at Brihuega in March, *the advance toward a national anti-Japanese front in China,* the stamping out of the nest of traitors in the Red Army in the Soviet Union, *the new cabinet consolidating the People's Front government in Spain and its quick suppression of the counter-revolutionary Trotskyite insurrection*—** each of these major developments was a body blow to the fascist conspirators of the world. *Not the least important front in this world struggle is the United*

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* It should be noted in the quotation from Browder and in the evidence set forth throughout this Report that the world Communist movement conceived the world alignment of forces as primarily those of fascism associated with monopoly capitalism, imperialism, and war, and those of "democracy" and "peace" associated with the Soviet Union.

** See p. 69, et seq., *supra*, re the so-called Trotskyite (POUM) insurrection and the Communist position with respect thereto.

States, where it is upon our still numerically small Party that responsibility rests in the first place to ensure the halting of the forces of reaction, fascism, and the war . . . " [Emphasis added] (P. 594; Pet. Ex. 3)

Lenin and Stalin (Pet. Ex. 2), a pamphlet by Earl Browder, published by the Party in February 1937, further evidences that Spain was regarded as a tactical application of the united front pursuant to Marxist-Leninist principles and was used to advance the Party in the United States toward a people's front where it would participate in this Government:

[fol. 78] " . . . Thirteen years ago Lenin died, but never was his spirit more powerfully shaping the destinies of mankind than today.

"What would Lenin speak about, if he could be with us tonight? Unquestionably he would speak, first of all, about the epic struggle for human liberation being waged for over six months by the heroic Spanish people, assaulted by the *concentrated forces of world reaction* . . . (P. 3)

• • •

"Political reaction and fascism were given a resounding defeat in the last elections in the United States. The people, by overwhelming majority, gave a mandate for democracy, progress, higher living standards, extended civil right and peace.

"But, as we Communists warned the masses from the beginning of the election campaign, the Roosevelt middle-of-the-road administration cannot be trusted to carry out this mandate . . . *Only the mass organization and struggle of the people, only the building of the People's Front, can realize that mandate. This is the message of Leninism to the people of America today.* (P. 10)

• • •

"While commemorating the death of Lenin, every member of the Communist Party should ask himself the question: Have I done all within my power to build and strengthen the Party of Lenin? . . .

"In serving the real and most pressing needs of the people, we say that there is nothing more important, nothing of deeper concern to us than the great struggle for democracy in Spain . . . Their battle is being waged against international fascism . . . (P. 13)

"Let this thirteenth anniversary of the death of Lenin mark the great strengthening and maturing of [fol. 79] the Party of Lenin, the Communist Party. *Let it mark another period of great advance of the unity of the workers, and the gathering of all the oppressed people in the People's Front . . . That is the message of the Communist Party, of the teachings of Marx, Engels, Lenin and Stalin.*" [Emphasis added] (P. 13, Pet. Ex. 2)

Charles Krumbein, New York State Party Secretary, reporting to its 10th Convention in May of 1938 (Pet. Ex. 12), also shows the CPUSA's conception of the United States, Britain, and France as imperialist nations and the Soviet Union as the spokesman and leader of the movement for "peace," but stresses that conditions in the United States are favorable for the anti-Fascist united front tactic:

" . . . *Of course, we know the American capitalist class are imperialists and have an imperialist policy. So has England and France. But in the light of the present-day situation, wherein they require maintenance of the status quo, and because of the moods and demands for peace on the part of the peoples of these countries, we can bring about concerted action against the main and immediate danger, fascist aggression.*

• • •

"The Soviet Union, guided and led by its mighty Communist Party, *and its great and noble leader Stalin —who is accepted as their leader by all oppressed humanity—not only stands ready to participate, but has been the outstanding spokesman and fighter for a policy to quarantine the aggressor.* The Soviet Union plays this role because it is a Socialist country. *It wants no other country's lands. It wants peace so that it can further develop its Socialist course, thereby becoming*

more and more the beacon light of the peoples of the entire world showing the way—and the only way—out of the constant misery and the perpetual wars that result from capitalism." [Emphasis added] (P. 20, Pet. Ex. 12)

Krumbein in this report further shows that the CPUSA's policy toward Spain centers around a slogan by Dimitrov who also announced the launching of the united front policy for the Comintern:

[fol. 80] " . . . we must now all the more energetically put into life Comrade Dimitroff's slogan of 'Everything for Spain.' Help and more help through the Medical Bureau and North American Committee to Aid Spanish Democracy. Help and more help to the Friends of the Lincoln Battalion.* More and more help in every conceivable way.

" . . . More than a million dollars in cash and goods has already been raised for Spain, a large portion of which came from our state. Nevertheless, this is not enough. More can be done. More will be done." (P. 21, Pet. Ex. 12)

Krumbein goes on to relate the active participation of returning ALB members in Party work:

"Here let me speak about something that we can be truly proud of. I refer to the 3,000 American boys of the Abraham Lincoln Battalion fighting alongside of their Spanish brothers in the trenches of Spain. The majority of these boys are members of our Party. Their role in the struggle there cannot be measured in words . . . We are proud to say that a number of the boys who have returned are delegates at this convention. Symbolic of all the boys in Spain is our comrade, who is a delegate here, who was blinded and crip-

* See p. 88, et seq., *infra*, concerning the Friends of the Abraham Lincoln Brigade.

pled in the struggle, Bob Raven."* (P. 21, Pet. Ex. 12)

Pet. Ex. 238, a pamphlet entitled *AMERICANS IN SPAIN*** shows the Party's use of the ALB in the united [fol. 31] front and places the struggle in Spain in perspective with a world struggle having its ramifications in the United States, principally with respect to establishing a "peoples front movement" here:

> "In New England, as well as thruout the country, the Communist Party has done everything possible to mobilize public opinion to support the Loyalist Government. The Communists have helped interpret events and issues correctly in the columns of the Daily and Sunday Worker and by radio broadcasts, have distributed millions of leaflets, and held hundreds of meeting. (P. 31)
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> • • •
>
> *"In the Abraham Lincoln Battalion itself, at least 50% are members of the Communist Party. From New England, the percentage is much higher. Out of the 100 in Spain, 75 are members of the Communist Party and Young Communist League.*
>
> "The Communists make no claim for special credit. *We are only doing our duty. We Communists realize that a defeat of Hitler-Mussolini and Franco means a death-blow to fascism in Spain and a great setback to the world forces of fascism and reaction and in our own country as well.*
>
> *"Our main purpose is to help weld together a powerful People's Front movement in New England capable of defeating fascism and reaction at home. By working*

* See p. 126, *infra*, re Party propaganda use of Raven to raise funds.

** Issued by the Communist Party of New England on behalf of the Party's participation in the struggle in Spain through the Abraham Lincoln Battalion, co-authored by Otis Hood, then head of the Massachusetts Party, and Phil Frankfeld, who was variously Party Secretary in Massachusetts, Maryland, and the State of Washington.

closely with liberals, progressives, trade unionists, and socialists, we feel that we are furthering the cause of democracy and at the same time laying the basis for the speedy establishment of the People's Front Movement right here." [Emphasis added] (P. 32, Pet. Ex. 238)

Robert Minor of the Party's National Committee also reported to the New York Party's 10th Convention in May 1938, which report shows the CPUSA's concept of the political potential of the ALB for Party development:

[fol. 82] "I make the categoric statement that the heroic fighting of the American boys in Spain, and the consequent interest and sympathy and pride awakening among the American people are a major factor in the political life of this country." (P. 234, Pet. Ex. 12)

Minor further shows in this report, the Communist conception of the activity in Spain (as part of a world-embracing program) as manifesting the "breaking of the monopoly of the classes in military science":

"If we see it this way, then we must go right ahead without letting any short time calculations on the ebb and flow in the military situation *change our main line of action in Spain and China and South America and everywhere.*

"*In one way this is a period of breaking the monopoly of the classes in military science and in the control of military instruments . . .*" [Emphasis added] (P. 234, Pet. Ex. 12)

John Little, Secretary, New York Young Communist League, also addressed this Party Convention, underscoring the predominance of the Party in the ALB and again showing that the CPUSA regarded the war in Spain and its activities in the United States as part of the same struggle:

"Comrades: As you know, I just returned after having spent some time with our boys in Spain . . .

" . . . It was my job to explain to them the problems of the work that we are confronted with at the present time.

"*. . . No matter what difficulties they have encountered, what personal hardships they may have undergone, their fighting spirit, love for our Party, love for the Soviet Union have increased a hundredfold. They have realized and seen the work of the Spanish Party, the heroic work that Party is carrying on daily and appreciate the role of the Communists and the Soviet Union in the struggle that is raging in Spain.* (Pp. 285-86)

• • •

[fol. 83] "*. . . They want us above everything else to continue to build the Party . . . realizing that we in America are carrying on our fight from this end and they from their end carrying on the fight there.*" [Emphasis added] (P. 286, Pet. Ex. 12)

Party leader Lawrence is positive in writing in Pet. Ex. 6, *supra*, that the "political vision" of Party members in Spain was paramount and that the CPUSA's activity there was cognate to its objectives in the United States, supplying the Party with trained cadres:

"I wish I had the time to elaborate on the work of our Party in Spain. *What valuable lessons we can draw and learn in working for the People's Front in America!* (P. 19)

• • •

"*. . .* Our American comrades have withstood those difficulties and *carried on like veterans and true anti-fascists because of their political vision and understanding.* (P. 20)

• • •

*"Our Party, though making terrific sacrifices, is at the same time gaining rich experiences and developing marvelous cadres.** (P. 22)

• • •

* See p. 116, et seq., *infra*, re the advancement of ALB veterans in the CPUSA.

"The role of the International Brigade is not yet over. Today more than ever, new international men are needed to help defeat the fascists . . . (P. 23)

• • • •

"Some of our men must come home—others must take their places. We must go back to our units and mass organizations and with the same spirit that pre- [fol. 84] *vails among our comrades in Spain, with the same determination and enthusiasm, we, here in America, must become the initiators of a new flow of men into Spain and help deliver the death blow to world fascism."* [Emphasis added] (P. 23, Pet. Ex. 6)

Browder, reporting to an enlarged meeting of the CPUSA's Politburo in November 1937 (reprinted in *The Communist* for December 1937, Pet. Ex. 20), shows that service in the ALB was the basis for advancement in the Party, and reveals the significance and benefit of this undertaking for the advancement of the Party here:

"We have invited to this meeting four comrades who have just returned from Spain—Comrade Steve Nelson, Comrade Bill Lawrence, Comrade Garland and Comrade Bradley. *The presence of these leading comrades is of special significance for us, because they represent in their own persons one of the greatest assets that our Party has in this last period. One of the greatest achievements that our Party has ever made is the building of the Lincoln and Washington Battalions of the International Brigade . . . The American movement has gained enormously in its international role, in its international recognition, by the work of our comrades in Spain,* and I want especially to mention the role of Comrade Steve Nelson . . . *And the fact that these comrades are back with us now gives us an opportunity to show how much the Party appreciates such sterling, fundamental contributions* . . . I am going to take the liberty of immediately suggesting an unusual step, out of the ordinary procedure of the Party, but one which I think everybody will agree with without much dis-

cussion: *that this meeting propose to the coming Central Committee Plenum the co-option of Steve Nelson to the Central Committee of our Party.*" [Emphasis added] (Pp. 1082-83, Pet. Ex. 20)

Herrick shows that the ALB was a very successful propaganda force for the CPUSA in the United States because it associated with communism the most stalwart fighters against fascism, and also gained the Party many supporters through the guise of anti-fascism.* [fol. 85]

This is borne out further by Horan, who, in the summer of 1937, was told by Eugene Bechtold, a CPUSA functionary, that many young men were brought into the Party as a result of its aid to Spain; that this was the best thing that had happened to the Party in many years; that it was really building up the Party's popular front in the United States; and that in recruiting persons to go to Spain, the Party was now reaching many people that it had never before been able to reach.

Maken establishes that there was a constant effort to recruit members of the Abraham Lincoln Brigade into the CPUSA. He states, "We had a slogan, 'Every member of the Brigade a member of the Communist Party'." (Tr. 752) He attended numerous Party meetings while in Spain, and he establishes that in the discussions among the men the pattern of the conversation was, in effect, that having been in Spain would make them better Communists upon their return to the United States, and that having been tested in action, they could take greater leadership responsibility in the CPUSA.

In the fall of 1937, at Tarazona, Robert Minor spoke to the ALB, stressing the necessity for discipline and preparation for future conflicts, indicating that after fascism was defeated in Spain, it would be necessary to defeat it in the United States. He told Gladnick, along with John Gates, in Valencia, that the Spanish War was a god-

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* This is an example of the cryptic united front technique in action. It is in this manner that so-called "Communist-front" organizations primarily function. (See Congressional finding in Section 2(7) of the Act.)

send to the CPUSA as it would provide it with real Bolsheviks, men who had learned to fight.

Prior to leaving for Spain, in discussions among Herrick's group, the men stated that they would be foreign revolutionists in Spain, and upon their return to the United States would be in the forefront of the revolutionary struggle here.

After having been demobilized about the first week of October 1938, Horan attended a meeting and dinner in Marsa, Spain, where Milton Wolff was also present, and Minor was the main speaker. Minor recounted what the [fol. 86] men had gone through, stating it was their duty to bring forward in the United States what they had learned in Spain to advance the CPUSA and to raise the political education of the American people, who were lagging behind in the struggle; that they were now firm Communists prepared by their experiences to do outstanding work for the Party and mass organizations in the United States; and that they could help form the hard core of a new and better Communist Party in the United States, the hard core upon which the American revolution* could be built. During this dinner there was much singing of the Internationale, the Red Flag, and the song of the Young Communist League of Spain, among others.

The train taking Horan's group from Spain in December 1938, stopped in France and Andre Marty addressed the men, constantly repeating the theme that they should never forget Spain, that they had been tried in battle and were now fully qualified to return to their own countries and to take their places in mass organizations and in the Communist Party.

Herrick establishes that throughout the discussions among the men in the ALB, it was acknowledged that since they were going through fire, they would be able to attain positions of leadership in the CPUSA upon their return to the United States and continue to further the aims and

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* Horan states that among Communists the term "revolution" encompasses whatever means are necessary to bring it about.

goal of the CPUSA, which was the taking of power in this country.*

Pursuant to arrangements with the League of Nations, the International Brigades were withdrawn from Spain in the latter part of 1938, using Ripoll, Spain, as a staging area for this operation.

Evidencing still further the CPUSA's prospective utilization of these men, it is established that while at Ripoll a dossier was gotten up covering the life and activities of each of the men in Spain for the Party's records.

Those whom the Party considered as not trustworthy were disciplined or expelled. For example, Maken inquired of John Gates (Brigade Commissar) how his dossier was shaping up, and was told that it was vile, relating incidents [fol. 87] of disagreements between Maken and his Party superiors while in Spain. While on board ship, Maken was notified by Joe Brandt that he had been expelled and suspended from the CPUSA. This occurred at a meeting of the expulsion committee which Maken was not invited to attend; the committee included Joe Brandt, John Gates, Saul Wellman, Leonard Lamb, and others.

Similarly Hecht, having returned from Spain with his assigned group and not having been charged with desertion, was told in the summer of 1939, by a member of the Party's Control Commission that he was not fit to carry a Party card, and his card was picked up but he was never formally expelled.

On the other hand, Herrick, prior to returning to the United States in September 1937, was given a letter by Oscar Hunter, high Party functionary and political commissar, recommending him for a CPUSA training school in the United States, which, with letters concerning other members of the group which returned with him, he delivered to Phil Bard at the FALB offices upon arrival in New York. Herrick attended sessions of a CPUSA school at Camp Beacon, New York, along with a number of other veterans of the Spanish War including Irving Goff, Aaron Harris, and Eugene Morse.

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* See p. 116, et seq., *infra*, for promotion of Spanish War veterans in the CPUSA on the basis of their records in Spain.

It is found and concluded that the CPUSA functioned as an integral part of the world Communist movement's anti-Fascist united front in aid of the CPS and the Soviet Union in Spain, and that through the utilization of this united front tactic thereby increased its own power and influence within the United States and provided itself with combat-trained cadres for future leadership.

Return of ALB From Spain

As will now be shown, the return from, as the going to, Spain was a Party operation controlled and supervised by Party functionaries in conformation with the international Communist apparatus.

Maken was with the first large group of men returned to the United States around December 1938, on the *S. S. Ansonia*. *Dave Leeds*, formerly New York State Financial Secretary of the Party, took charge of the group's finances coming back. Herrick returned with a group on the *Normandie*, pursuant to arrangements made by Al Friedman, CPUSA functionary.

Horan left Spain with a large group which sailed on the *City of Paris* from Le Havre around the seventh of [fol. 88] December 1938. On board ship, Milton Cohen led the Chicago group, Izzy Goldstein was the Commissar, and Horan was the propagandist. Milton Wolff was in overall charge of the entire group.

Gladnick, in returning, was smuggled into France, and there arrested and jailed. While in jail he was visited by Dave Leeds, CPUSA functionary masquerading as an American Embassy representative using the name "Amariglio." Pursuant to Leeds' instructions, Gladnick contacted the French Communist Party, which arranged for his escape and contact with a CPUSA representative named "Steve" in Paris who instructed him to get in touch with "Frenchy" Robinson, CPUSA functionary in Le Havre.

At Le Havre, Gladnick met Robinson, who had a number of other Americans concealed in a hotel, and again visited the French teacher who was a Comintern agent, where he met a German engaged in smuggling literature into Nazi Germany for the German Communist Party. The German

Communist worked closely with Robinson who arranged for smuggling persons out of Le Havre coming to the United States. Robinson made arrangements to smuggle Gladnick into the United States on the *Normandie*, but these plans were changed so Gladnick stowed away on the *President Harding* with the assistance of Communist members of its crew who knew him as Nat Wald, Party Waterfront Section Organizer in New York City.

The Petitioner's witness Hecht returned from Spain on the *President Harding* with the last big group to come back.

Of the approximately 3,000 men who went to Spain from the United States, the record shows that about 1,800 returned. It is a portion of these returned men which constitutes the membership of the Respondent organization.

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[fol. 89]

BEFORE THE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 108-53

HERBERT BROWNELL, JR., Attorney General of the United States, Petitioner,

v.

VETERANS OF THE ABRAHAM LINCOLN BRIGADE, Respondent.

REPORT AND ORDER OF THE BOARD

Decided December 21, 1955

Robert H. Purl, Thomas A. Daly, and Troy B. Conner, Jr., for petitioner.

Homer C. Clay for respondent.

[fol. 90] STATEMENT OF THE CASE

On April 22, 1953, the Attorney General of the United States, petitioner herein, acting under section 13(a) of the

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NOTE: Internal page references are to centered numbers within dashes.

Subversive Activities Control Act of 1950 (hereinafter called the Act), filed a petition with the Board for an order requiring the Veterans of the Abraham Lincoln Brigade, respondent (also designated VALB), to register with the Attorney General as a Communist-front organization in compliance with sections 7(b), (c), and (d) of the Act.

Respondent's motions addressed to the petition were disposed of by the Board after which, on August 28, 1953, an amended petition (herein called the petition) was filed. Motions addressed to this petition by respondent were denied and thereafter respondent, on November 16, 1953, filed its answer.

In substance the petition* alleges that respondent is a Communist-front organization as defined in section 3(4) of the Act in that it is directed, dominated, and controlled by the Communist Party of the United States, a Communist-action organization (herein referred to as the CPUSA or the Party), and is primarily operated for the purpose of giving aid and support to the Party and the world Communist movement. Numerous factual allegations encompassing the evidentiary considerations pertaining to Communist-front organizations contained in section 13(f) of the Act are set forth in support of the charge.

Respondent, in its answer, denies that it is a Communist-front organization as alleged and denies the various subordinate factual allegations but admits that there has existed an organization known as the VALB, which has had at various periods of time and in varying numbers local posts which operated autonomously; that it has distributed through the mail its publication *Volunteer for Liberty;* and that pursuant to its general policy it has received advice, aid, and support from the CPUSA, among other organizations, including favorable publicity in publications of Communist opinion, has collected signatures on petitions, conducted picket lines, and published and disseminated litera-

* The petition as subsequently amended to conform to the proof (see "Discussion of Law," *infra*) alleges in substance that respondent has existed since 1940, first as a membership corporation under the laws of the State of New York, which corporation was dissolved by State action on October 15, 1952, and that respondent has continued to exist since that date as an association.

[fol. 91] ture in support of causes and objectives favored by the Communist Party among other organizations, but declares that it has not surrendered its independent status in so doing.

Issue thus being joined, the hearing commenced on May 3, 1954, in Washington, D.C., before a Hearing Panel consisting of Board Members Kathryn McHale, Presiding Member, and Watson B. Miller; it was transferred at respondent's request to New York City; and was concluded in Washington, D.C., on November 16, 1954. Briefs and proposed findings of fact were timely filed by both parties and final arguments made before the Panel.

The record of the hearing comprises 4,576 pages of transcript and 306 exhibits. Petitioner presented 16 witnesses and introduced 256 exhibits. Respondent presented five witnesses* and introduced 50 exhibits. One of respondent's witnesses, Bishop G. Bromley Oxnam, testified solely concerning the general credibility of petitioner's witness Matusow.

On May 18, 1955, the Presiding Member** issued a Recommended Decision finding respondent to be a Communist-front organization and recommending that the Board issue an order requiring it to register as such. Exceptions to this decision were taken by respondent and petitioner replied thereto. Oral argument on exceptions was heard by the Board on September 9, 1955.

In its exceptions respondent contends generally that the findings of fact in the Recommended Decision are either contrary to the evidence or unsupported by a preponderance of credible, competent evidence. It specifically excepts to numerous findings and conclusions contending variously that they are based on hearsay and/or irrelevant and immaterial evidence, or are unsupported by or contrary to the preponderance of evidence. Respondent's exceptions concerning the sufficiency of the evidence are specifically dis-

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* Pertinent background data for all witnesses are set forth in the Appendix.

** Board Member Miller became unavailable to the Board by expiration of his term of office on March 4, 1955, and did not participate in the Recommended Decision.

cussed in context or are treated separately under "Discussion of Law," *infra,* where warranted, and except as expressly or impliedly incorporated herein are overruled as being unsupported by the record or otherwise lacking in merit.

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[fol. 92] We have evaluated the Recommended Decision, the exceptions thereto and arguments, in the light of the entire record and accordingly reach the findings herein. The organizational positions in the Party and in respondent held by petitioner's witnesses (see Appendix) and their activities therein, which afforded the basis for their knowledge* and the observations of the Presiding Member of their demeanor while on the stand have also been considered.

Respondent's exception and argument to the effect that the character of some of petitioner's witnesses as "informers, police or FBI spies" discredits their testimony is without merit. The Courts have recognized that such testimony is not inherently incredible as respondent apparently assumes, especially where, as in matters of this sort, informers and Government operatives are practically indispensable if the Government is to obtain information. See *CPUSA* v. *SACB,* 223 F. 2d 531, at 565. In weighing the evidence we have taken into account that some of petitioner's witnesses fall into the foregoing category and have scrutinized their testimony accordingly. We agree with the Presiding Member's conclusion, to which no exception was taken, that the testimony of petitioner's witness Matusow should be totally disregarded, and this has been done. Otherwise, and in the light of the foregoing considerations, viewed against the record as a whole, we find no warrant for disregarding the substance of the testimony of petitioner's witnesses.

In weighing respondent's evidence, the testimony of its principal witness, Wolff, was considered in the light of his vital interest in the outcome of this proceeding and the fact that full cross-examination of pertinent phases of his direct testimony was precluded by the repeated invocation of the

* Petitioner's witnesses Budenz and Lautner were established as experts in Marxism-Leninism and the Communist movement, and are so regarded.

privilege against self-incrimination in the Fifth Amendment to the Constitution (see "Discussion of Law," *infra*). The testimony of respondent's witness Morgan was similarly evaluated. In weighing the testimony of respondent's witness Asensio, we are in accord with the Presiding Member's observations, as confirmed by the record, that his manifest interest to protect the integrity of the Spanish Republican Government as being free from any semblance of Communist influence, and his professed ignorance of the existence and operation of the Communist International and of the Political Commissar system of the Russian Red

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[fol. 93] Army, detracted materially from the weight of his testimony. The organizational background and activities of these witnesses, which afford the basis of their knowledge, have also been considered.

Respondent stated that it was afforded a fair and impartial hearing, and our independent review of the record confirms this.

Findings of Fact

Organization and Policies of the CPUSA and the World Communist Movement

As the petition alleges that respondent is dominated by and primarily operates to serve the Party and the world Communist movement, considerable evidence was submitted pertaining to the organization, character, purpose, and programs of the Party and the world Communist movement, and findings based thereon are made in the Recommended Decision. Respondent excepts to these findings on the ground that such facts are beyond its knowledge, are not susceptible to cross-examination, and are irrelevant and immaterial.

We find no merit in this position. The relevancy and materiality of such evidence is patent from the petition and the evidentiary considerations contained in section 13(f) of the Act which are embodied in the allegations of the petition. The findings herein made concerning the Party and the world Communist movement are all reasonably probative of the primary issues. Although respondent's argu-

ments that these matters are beyond its knowledge has no legal substance, it is nevertheless clearly answered where, as here, it is alleged and the proof establishes that many of its officers past and present, and members, also are or have been Party members and functionaries.

The established facts relating to the organization, programs, and policies of the world Communist movement and its component, the CPUSA, commencing with the period of the Spanish Civil War which the record shows began on July 18, 1936, by the rebellion of forces led by General Francisco Franco against the Republican Government of Spain, will now be set out. Petitioner presented Budenz and Lautner, experts in Marxism-Leninism and the Communist movement, who functioned in the Party's highest organizational and administrative circles, and a number of other former Party members and functionaries, many of whom are also Spanish War veterans and former members of respondent,* who testified to these matters.

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[fol. 94] They establish that the international Communist movement, directed and controlled by the Soviet Union, was, at the time of the Spanish Civil War and until the early 1940's, organized as the Communist International (hereafter also called the Comintern) with headquarters in Moscow, USSR; that it had subordinate sections in many countries throughout the world consisting of national parties such as the Communist Parties of the United States and Spain,** upon which its decisions were binding. The Comintern maintained representatives in the United States, Spain, France, and other countries, and the Communists in those countries functioned in coordination with such representatives. The CPUSA's disaffiliation from the Comintern in 1940 was in form only, for it remained an active part of the world Communist movement which continued, after the dissolution of the Comintern in 1943, substantially as described in section 2 of the Act.

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* Twelve witnesses, excluding Matusow, had been members of the Party and of these, six, namely, Gladnick, Harris, Hecht, Herrick, Horan, and Maken, were or had been members of respondent.

** Organization of the Communist Party of Spain, herein referred to as CPS, is discussed *infra*.

International Press Correspondence, abbreviated Inprecor (which comprises Pet. Ex. 1), was the official organ of the Comintern and contained its authorized articles and statements. It was distributed generally, pursuant to Party instructions, throughout the Communist Party and functionaries were required to study it. The successor to this publication was *World News and Views* (which comprises Pet. Ex. 7). An official organ of the Comintern's Executive Committee was called the *Communist International* (a copy of which is Pet. Ex. 5).

The Communist International functioned through an Executive Committee which included among its members Andre Marty, then leader of the Communist Party of France, and Dolores Ibarruri (*nom de guerre,* La Pasionaria),* a member of the Central Committee of the Communist Party of Spain.

The CPUSA functions through its Political Bureau, hereinafter called the Politburo, which, in effect, is an executive committee for the Party's highest body, variously called the National or Central Committee. The Party is divided into Districts (with subordinate organizational units identified as Sections, Branches, and Clubs), which usually corre-

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[fol. 95] spond to a State, each of which has a State or District Committee, whose function is to carry out the orders and perform the assignments of the Party's District or State Bureau.

The top official of any given Party unit is the organizer, and there are various Party officers on every organizational level as, for example, on the Branch level, officers include membership, literature, and financial directors who are considered Party functionaries.

The Party also has various commissions or committees dealing with a specific area of activity, which function both on the national and local levels. It is a highly disciplined organization and has Control and Review Commissions which function throughout the Party ferreting out anti-Party elements and maintaining discipline and security.

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* An International Brigades Hospital was named in honor of La Pasionaria. Further use of La Pasionaria as a symbol of Spanish Communism is discussed in later portions of this Report.

These commissions may censure, place on probation, or expel Party members, and may assign, as a form of discipline, a "control task" (a specific assignment to test a member's loyalty and sincerity) which, if performed to the Party's satisfaction, warrants reinstatement to full participation in the Party.* The Party maintains a system of schools** for the indoctrination of its members in Marxism-Leninism, and deviations from or revisions of what the Party teaches as Marxism-Leninism are considered serious political errors or breaches of Party discipline.***

The Party has also controlled and operated a number of bookstores (see "Party Support of Respondent," *infra*, for aid via bookshops), and a number of so-called "resort camps" such as Camp Unity and Camp Beacon in New York State.

The Young Communist League, not now in existence as such, was the young people's section of the Party, and accordingly was affiliated with the Youth Section of the Communist International. Reference herein made to the Party, its members and functionaries, will encompass the Young Communist League, its members and functionaries, where pertinent.

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[fol. 96] In May of 1944 the Communist Party dissolved as a Party and re-formed into the Communist Political Association, and in the summer of 1945, being assertedly tainted with revisionism, was reconstituted as the Communist Party, at which time Earl Browder was deposed as Party leader, and a temporary Secretariat was appointed.**** William Z. Foster thereafter became head of the Party.

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* Herrick was assigned as part of Communist discipline a control task in the Abraham Lincoln Brigade. Maken, too, was given such a task in connection with his joining respondent, which is discussed later herein.

** A number of petitioner's witnesses attended such schools (see Appendix), as did some of respondent's members.

*** Petitioner's witness Romerstein was expelled from the Party for minor deviations, and Blauvelt for being a "Christian Frontist." Other examples appear in subsequent sections of this Report.

**** See p. 35, *infra*, for participation of respondent's members in these proceedings and membership on the Secretariat.

The *Daily Worker*, official organ of the Party, is a daily publication, the Sunday edition of which has variously been called *The Worker* and the *Sunday Worker* (herein generally called the *Daily Worker*).*

Budenz, Editor of the *Daily Worker* from 1940 to 1945, and other witnesses establish that it is a medium for conveying directives throughout the CPUSA; that it indicates not only in editorials but in political articles precisely what should be done by the leadership in Party Districts and Sections throughout the country; and that, concerning national and international political questions, it reflects solely Communist policies and views.

Budenz, as its Managing Editor, and its Editorial Board were controlled by the Politburo and supervised daily by a Politburo representative, variously including Alexander Bittelman, William Z. Foster, Eugene Dennis, and Jack Stachel.

The *Midwest Daily Record* was an officially controlled Party newspaper organized by the Party in Chicago, Illinois, in 1937, with Budenz as Editor. The Party's officially controlled West Coast organ is a daily paper called variously *Peoples Daily World* and the *Daily Peoples World*** (hereinafter called *Peoples World*).

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[fol. 97] *Political Affairs*, a monthly publication, is the Party's official theoretical organ, an organ of Marxism-Leninism which, prior to 1944, was known as *The Communist*.*** Its chief function (which also was that of *The*

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* Copies received in evidence comprise Pet. Exs. 14, 15, 16, 17, 18, 19, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 43, 44, 47, 49, 52, 53, 54, 85, 127, 156, 157, 158, 160, 164, 165, 166, 167, 169, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 187, 188, 189, 192, 193, 194, 199, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 239, 240, 241, 243, 245, 246, 247, 248, 249, 250, 251, 252, 253, 256, 257, 258, and Resp. Ex. 28.

** Copies received in evidence comprise Pet. Exs. 152, 153, 154, 155, 159, 161, 162, and 163.

*** Copies of *Political Affairs* comprise Pet. Exs. 46, 51, and 170; *The Communist*, Pet. Exs. 3, 4, 10, 11, 20, 36, 41, 42. The change in name of this publication occurred when the Party became the Communist Political Association in 1944, but upon reverting to the Communist Party in 1945, the name *Political Affairs* was retained.

Communist) is to explain the Party line in Marxist-Leninist terms for American study and action, and (as was true concerning *The Communist*) it is required study material for every Party functionary.

New Masses, a weekly publication, (a copy of which comprises Pet. Ex. 9) was an officially controlled organ of the Party which dealt principally with problems in the arts and sciences from the Party point of view.

A printing union identification symbol described as "Bug 209" appears on many of the Party publications, including Party membership cards, and pertains to the printing plant of Prompt Press, a Party publishing organization. (See also "Party Support of Respondent," *infra.*) Workers Library Publishers, Inc., is established as a Party publishing organization which also operated out of Party headquarters and was succeeded through reorganization by New Century Publishers.

The necessity for and duty of all Party members and functionaries to read these publications (evidencing the Party's conception of their importance) is prescribed on Party membership cards. (See Pet. Exs. 132, 133, 134, and 135.)* In addition it is a Party directive at all times to read the *Daily Worker* to ascertain the Party's day-to-day policies and to work to increase its circulation. It is the duty of Party members "to strive to master the program and policies of the Party, the principles of Marxism-Leninism." (Pet. Ex. 133.) As evidenced by this exhibit,

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[fol. 98] the programs and policies of the Communist Party comprise the careful implementation of the principles of Marxism-Leninism.

Budenz establishes that Marxism-Leninism has a well-established meaning. It is the world outlook of the international Communist movement, based on writings of Marx, Engels, Lenin, and Stalin, and has as its fundamental principle, dialectical materialism. Stalin defines it as the theory and tactics of the proletarian revolution in general

* In 1949 a reorganization for security reasons took place in the Party and membership cards were no longer issued; membership lists were broken down and concealed and Party Branches were broken down into cells of approximately five persons.

and the dictatorship of the proletariat in particular, which can only be obtained by the violent overthrow of non-Communist governments, including the Government of the United States, which is regarded by Communists as a bourgeois, imperialist government, constituting a dictatorship of monopoly capitalism.* Budenz testifies that it is the law of inevitable violent social revolution taught by Lenin and Stalin as contained in part in Lenin's *State and Revolution* and Stalin's work *Foundations of Leninism*, which the CPUSA. uses as basic guides for its activities.

According to Marxism-Leninism, the Communist Party, until such time as it can establish the dictatorship of the proletariat, primarily functions to penetrate mass-type organizations, making them transmission belts for spreading Communist principles, policies and programs. Marxism-Leninism requires the advocacy of reforms, as a screen or cover for illegal activities aimed at bringing about the dictatorship of the proletariat.

Budenz explains that in expanding Marxism-Leninism the Communist method is to advocate and use certain justifiable reforms, thereby gaining prestige in an organiza-

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[fol. 99] tion, community, or nation; and then through such reforms strives to establish acceptance for other facets of the Communist position with the ultimate aim of bringing about a Soviet dictatorship.**

One of the main tactical approaches for extending Marxism-Leninism promulgated by the Communist International and utilized constantly by Communist Parties throughout the world is the "united front." This tactic of

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* Romerstein was taught by the Party in accordance with the writings of Marx, Engels, Stalin, Foster, and Dennis that the revolution could not come about peacefully in the United States, but had to be violent, and that the capitalist class and the State apparatus had to be smashed.

** Lautner refers to Stalin's language on the use of reforms in *Foundations of Leninism* in giving corroborating testimony. Lautner explains that the Party's position concerning the Works Progress Administration in the United States was that it was a reform to be used by the revolutionary movement; the Party held that capitalism could not solve its dilemma through WPA and in the ultimate sense did not support it but exploited WPA to further increase the Party's influence.

the world Communist movement in its broader aspects was introduced by George Dimitrov* as a spokesman for the Comintern at its Seventh World Congress in 1935, and the so-called united front period of the world Communist movement which thus began was broken by the period of the Hitler-Stalin Pact, 1939-1941 (discussed later herein), and resumed thereafter.

The united front tactic generally involves working with and through non-Communist organizations and may take on several forms such as a formal, open, united front whereby the Party participates with other organizations in a certain movement, or may be what is known as the united front from below where Communists infiltrate, raising the cry of unity in order to advance their own penetration and influence. It also embodies the concept of working with democratic nations and democratic organizations, even though such have previously been attacked very bitterly by the Communists. As stressed by Dimitrov, its application by Communists must always advance the dictatorship of the proletariat.

Consequently, as utilized by the Communist Party, this tactic varies in scope and terminology. There is the general united front concept involving unity of the working class, which can be partial unity on a specific issue for a specific period of time, or which can be an organic unity of working class organizations. A broader concept is known as the people's front, which is built around a so-called anti-fascist unity of various components of a given society or country

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[fol. 100] and comprehends a program from which a government, including a Communist component, may be organized.

It is also established that in connection with world communism's united front movement, the term "fascist" or "fascism" is carefully and designedly used to label the chief enemies of Soviet Russia (fascist or otherwise), and to serve Communist interests, in an endeavor to win them as many allies as possible through its application at any given time. This technique is the center of Communist strategy and is grounded on Stalin's *Foundations of Lenin-*

* A battalion of one of the International Brigades in Spain carried Dimitrov's name. (Also spelled Dimitroff.)

ism which teaches that with the vanguard alone victory is impossible, and hence it is necessary for Communists to mobilize the support of many who are not Communists. In order to do so, it is necessary to raise issues which do not involve pitting communism against something else and attempting to rally masses in support of communism, but, rather, involves rallying them against or around another ostensible objective.

The real objective is always to get the maximum number of supporters that can be moved along the path of the Communist line for any particular period. "Anti-fascism" and "Spanish fascism" were used pursuant to this strategy and tactic as a means of including hundreds of thousands of supporters to follow the Communist line for Communist purposes, leading ultimately to Communist domination.

As an indication of its importance to the Party, petitioner's witness Lautner was elevated to the position of District Organizer for West Virginia in 1936, in recognition of his work in building an anti-fascist united front movement on New York City's west side. Further, the *Midwest Daily Record* was organized by the Party in 1937, with witness Budenz as Editor, for the purpose of advancing the united front in this country, and Party leader Earl Browder termed it the Party's gift to the united front.

By way of further introduction, the established facts concerning the use of certain terminology by the Communist movement which has been given consideration in weighing the mass of documentary evidence, will now be set forth.

Petitioner's witnesses, principally Budenz and Lautner, establish that the term "progressive movement" or "progressive organization" is used by Communists to indicate organizations which are controlled by Communists or are serving Communist purposes; the term "mass organization" refers primarily to broad membership organizations

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[fol. 101] which Communists control or are seeking to penetrate and influence; "peoples organizations" refers to Party-controlled organizations; "international working class" refers to the working class as controlled and led by international communism; and the terms "democratic, democrats, democracy" refer to "democracy" under a Communist or

Soviet regime which, according to the Party, is the only system under which true democracy is possible, as distinguished from "bourgeois democracy" in the United States, which is considered a form of dictatorship by the capitalist class. "Socialist reconstruction of society" imports the basic Marxist-Leninist concept of using force and violence to overthrow all existing capitalist governments and to establish on the ruins thereof a new type of society through the dictatorship of the proletariat.

THE INTERNATIONAL BRIGADES

Petitioner from the outset has taken the position that the nature, character, and purpose of the so-called "International Brigades," of which respondent's members are veterans, are relevant and material to a full and enlightened determination of respondent's status as put into issue by the petition and answer, charging that respondent is the culmination of one of such Brigades, known as the Abraham Lincoln Brigade, which was organized by the Communist Party pursuant to a directive from the Communist International in Moscow, to advance the Soviet cause in Spain. Considerable evidence pertinent to this matter was submitted by both parties.

The record establishes without contradiction that the International Brigades, as such, were set up in Spain, commencing in the fall of 1936, and units thereof first participated in the Spanish Civil War in November 1936 in the defense of Madrid. There were five International Brigades: the Eleventh, composed principally of Germans; the Twelfth, or Garibaldi Brigade, of Italians; the Thirteenth or Dombrowski, predominantly Polish; the Fourteenth, consisting of French and Belgians; and the Fifteenth, consisting chiefly of Americans, British, and Canadians. Andre Marty, member of the Comintern's Executive Committee and leading French Communist, was considered by ALB troops as the supreme head* of the International Brigades, being the Chief Political Commissar, and Luigi

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[fol. 102] Gallo, also known as Luigi Longo—then and now

* Respondent's exception to the finding that Marty was the supreme head of the International Brigades is overruled.

a high functionary of the Communist Party of Italy—was Commissar Inspector and second in authority to Marty. Administrative headquarters of the International Brigades was first at Albacete, Spain, and political headquarters at Calle Vasquez, in Madrid. In 1938, administrative headquarters was moved to Barcelona and political headquarters to Badalona, Spain.

THE ABRAHAM LINCOLN BRIGADE

We are here concerned with part of the Fifteenth Brigade, namely, the Abraham Lincoln and George Washington Battalions which, along with a battalion of British and Canadians called the MacKenzie-Papineau, and a battalion of Spanish troops, made up the Fifteenth Brigade. The first arrivals in Spain from the United States in early 1937 were formed into the Abraham Lincoln Battalion, having a strength of 400 to 500 men; those arriving later were formed into the George Washington Battalion and after severe decimation in combat the two were merged about mid-July 1937 into a single battalion called the Lincoln-Washington Battalion, and later referred to as the Abraham Lincoln Battalion. The Fifteenth Brigade was often referred to in the United States as the Abraham Lincoln Brigade, and for convenience of discussion the two aforementioned American battalions will be referred to herein as the ALB.

THE ALB AS PART OF THE COMINTERN'S UNITED FRONT TO ADVANCE WORLD COMMUNISM VIA SPAIN

The Recommended Decision devoted some sixty-eight pages (pp. 20-88) to a detailed treatment of the evidence relating to the formation of the ALB and its functioning in Spain as an element of the international Communist united front in furtherance of the Soviet interest there. Upon review of this statement of the evidence, both testimonial and documentary, and the conclusions drawn there-

[fol. 103] from, taking into account respondent's exception thereto,* we find no substantive error in this background

* Respondent excepts to a number of statements in the Recommended Decision based upon (a) activities and reports of Party

material. We, therefore, deem it unnecessary to burden this Report with a protracted recitation of the evidence concerning these matters, and accordingly, except in the minor instance noted in our summary below, hereby adopt the findings and conclusions which are set out in the Recommended Decision commencing on page 20 and concluding on page 88 thereof.

As adopted, our findings and conclusions, which comport with the preponderance of the evidence are summarized as follows:

Concerning the furtherance of world communism in Spain, the record establishes that the significance of Spain to the world Communist movement in 1936 had several aspects. It represented a situation where a Communist Party, that of Spain (a section of the Comintern), was in a position to participate in the government of a western European country, and to advance Soviet influence in Spain and thence into Latin America; and also an opportunity to curb antithetical fascism and protect the Soviet Union.

The tactic utilized was an anti-fascist united front involving military aid through the International Brigades, the supplying of war material, and a technical mission. A number of ALB members, including petitioner's witness Gladnick, functioned in, or in direct liaison with, the Russian military mission and some were trained by Russian experts in sabotage and commando tactics for service in

[fol. 104] Spain and for future service elsewhere through-

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members and officers at official Party meetings testified to by witnesses who were present at such meetings, and (b) statements in domestic and international official Communist organs concerning policies and activities of the organizations for which these organs speak, on the ground that such evidence is hearsay and cannot be used as a basis for a finding. We do not agree that evidence of this character as used in the Recommended Decision and in this Report is technically incompetent, and we deem it to be highly relevant and material to, and probative of, the issues here involved. Moreover, in all instances this evidence stands without specific contradiction. Such evidence has been given its due weight, and suffice it to say that in no instance does mere uncorroborated hearsay constitute the sole support for any major finding or conclusion reached.

out the world. The International Brigades were considered by the Comintern as "worthy members of that revolutionary workers' Party of a new type, the world Party of the Bolsheviks" (p. 11, Pet. Ex. 83); as the fighting unit of the "World People's Front" and their "highly political significance" (Pet. Ex. 84) was signified by the three-pointed star, the symbol of the World People's Front* which they wore as their distinguishing mark. The objective of the Comintern was, in alliance with the other political parties of the Republic fighting Franco, to obtain dominance for the Communist Party of Spain, which upon Franco's defeat could dominate the Spanish Government.

The Communist Party of Spain (CPS) was a section of the Communist International and its Central Committee included Dolores Ibarruri, known as La Pasionaria, and Enrique Lister, Commander of the Fifth Communist Regiment, and later of International Brigades troops. Jose Diaz was General Secretary of this Party, and Vicente Uribe and Jesus Hernandez, who became Minister of Agriculture and Minister of Propaganda and Education in the Republican Government, respectively, were also CPS members. In accordance with the Comintern united front, the CPS, in alliance with Socialists, Anarchists, Republicans, and a rival Marxist Party called the POUM (United Marxist Workers Party), and other so-called "bourgeois" political parties, attacked by devious means the other parties and party leaders in this alliance. With the aid of the Soviet Union and the International Brigades, including the ALB, the CPS was advanced substantially in power, membership, and prestige in Spain.

In the United States the recruiting, organizing, equipping, and transporting of men to be formed into the ALB was handled by the Party as an operative section of the Communist International pursuant to the latter's direc-

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[fol. 105] tive. This operation was discussed and reported upon in meetings of the Party's highest committees, and a recruiting system operated within the Party organization

* The three-cornered star significantly enough is also the symbol of respondent (appearing on letterheads, publications, and lapel pins), and evidences the coordinate relationship of respondent as an instrument for the continuation of the united front.

to obtain recruits. Both Party and Comintern personnel performed various necessary tasks incident to such an operation, and by secret and, in some instances, patently illegal means, and with the aid of a Soviet travel agency, "Intourist," a large number of the men were moved to France and from there, in cooperation with the French Communist Party and Comintern agents, into Spain. Within the Party there were several categories of men who went to Spain under these circumstances; there were those who were ordered to do so and those who volunteered; however, not all who volunteered were permitted to go (witness Lautner is an example), as some were considered more valuable to the Party at home.

Within the Party, service in Spain was regarded as evidence of the highest devotion to Party principles and as an opportunity to learn firsthand the necessary fundamentals for fighting a revolution and hence to become eminently qualified for leadership in the CPUSA's struggle for establishment of a Communist dictatorship in the United States.

As constituted, the majority of ALB personnel were Party members and many of its leaders, both military and political, were Party members or functionaries.* The official ALB organ in Spain, called the *Volunteer for Liberty*,** was supervised by Communists and reflected the Communist position depicting the struggle there as a parallel to the war then raging in China and as but part of the international struggle of communism against fascism. The reading material furnished the men was predominantly Communist, and non-Communist material and mail were censored for Party purposes. ALB members, in addition to

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[fol. 106] being subject to the military discipline of the Spanish Republican Army, were also subject to that of

* This finding reflects the preponderance of the credible evidence, notwithstanding that in accordance with respondent's exception No. 22, we do not find that Robert Merriman was a Party functionary.

** Copies published in Spain comprise Pet. Exs. 55, 56, 83, 84, and 87. Respondent later adopted this as the name for its official organ.

the International Brigades and to the discipline of the Comintern.

As an aspect of Communist discipline and indoctrination, political commissars, overwhelmingly Communists, functioned throughout the Brigades and on every level of command in the Fifteenth Brigade. The commissar was the political head of the military unit and, although military commanders had supremacy in military matters, they were in the final analysis under the supervision and control of the commissar. The commissar's function included looking after the welfare of the men but was primarily to see that they were properly indoctrinated politically to avoid dissidence and to assure obedience to discipline, both political and military, and they so functioned. A number of ALB political commissars, including those on the highest levels, who were also Party members, later became leaders or members of respondent. A secret police headed by a Comintern agent functioned within the Brigades to maintain Communist discipline, and ALB members operated on this force. ALB troops were given punishment for political dissidence and breaches of Party discipline, ranging in severity from a Party control task to expulsion from the Party, imprisonment, or death.

In Spain the ALB operated in furtherance of the Comintern's united front tactic and was considered, along with other International Brigades, as a symbol of anti-fascist unity in this united front. Its officers and men at two of its training camps took oaths pledging to the working classes throughout the world an eternal and world-wide fight against "fascism" until it was destroyed.

The Soviet interest in Spain was constantly referred to by CPUSA leaders in meetings of its highest ruling bodies, and it is established that the CPUSA's participation in Spain through the ALB involved two levels of purpose; internationally, to aid the CPS, as another integral section of the Comintern, and so enhance its power as to establish it as the dominant force in the Spanish Republican Government to serve the ends of the Soviet Union; and domestically, to build its own stature by showing solidarity with the Spanish people against fascism which it used as

a propaganda base.* In fact, functioning as an integral

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[fol. 107] part of the world Communist movement's anti-fascist united front, the Party, in conjunction with the CPS and the Soviet Union in Spain, aided the Soviet cause there and provided itself with combat-trained cadres for future leadership; and through application of this tactic domestically, using Spanish fascism as a united front shibboleth, increased its own power, membership, and influence within the United States.

The return of personnel from Spain, just as the going, was a Party operation controlled and supervised by Party personnel in cooperation with the international Communist apparatus. Of the approximately 3,000 men who went to Spain, about 1,800 returned, and less than 600 survive today. It is from among these veterans that respondent's membership is derived.

THE FRIENDS OF THE ABRAHAM LINCOLN BRIGADE

The Friends of the Abraham Lincoln Brigade (herein also referred to as the FALB) was an organization connected with the Party which functioned in cities throughout the United States to raise funds to finance the ALB operation and as a propaganda outlet for the Party. Those shown on this record to be active as its officers and staff members were in the main Party members and functionaries, principal among whom were David McKelvy White and Phil Bard, who returned early from Spain to engage in this work. The FALB functioned in conjunction with the Party and was supported by the Party organization.

Party leader Browder turned over funds to Phil Bard, then in charge of the FALB office, to be distributed through it to men returning from Spain. ALB veterans were sent through the FALB to the Party's resort camp, Camp Beacon, which also was used for the Party's National Training School. Petitioner's witness Herrick and respondent's witness Wolff went to this camp through the FALB. In conjunction with the Party the FALB obtained employment for petitioner's witness Harris in California. Fund-

* The utilization of traditional American names such as Lincoln and Washington was also pursuant to a Communist deception technique which the Party employs to advance its own interests.

raising affairs and rallies were conducted by it and the Party in which ALB members, some of whom were also Party members, participated, such as petitioner's witnesses Harris, Herrick, and Maken. A pamphlet containing Herrick's picture and a story about him was successfully used by the FALB in raising a substantial sum of money.

The FALB provided ALB veterans, including a number who were witnesses for petitioner and respondent, aid and

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[fol. 108] assistance by way of cash contributions, clothing, medical and dental services, and legal assistance. As an example of this last service, petitioner's witnesses Hecht and Gladnick, Party members, were furnished such aid when, upon re-entering the United States, they were detained by immigration authorities.

The FALB in using ALB members to raise money also projected through them Party propaganda. This is shown by Herrick's testimony with respect to a statement for publication under his picture in *Life Magazine*. An FALB publicity agent rejected Herrick's statement that he had gone to Spain as a member of the Communist movement and told Herrick to say that he had gone because he was Jewish, to join in the fight against fascism. Herrick was also directed to make speeches, and to say things that were untrue. Harris was told by John Seacat of the FALB that his letters from Spain had been read at Party meetings and at FALB-sponsored affairs for their propaganda value.

Respondent's witnesses Wolff, Morgan, and Shipman add little concerning the FALB. While, as stated, they received aid through this organization, witness Morgan, under cross-examination and after first attempting to claim the Constitutional privilege against self-incrimination, states he cannot recall who at the FALB offices arranged for his medical attention, etc., or the name of anyone that he contacted there. Respondent's witness Wolff, after returning from Spain, spent some time at the FALB offices acquainting himself with the nature of the organization and its supporters. He states its prime movers were friends and families of ALB men and a few returned veterans such as David White.

In December 1939, the VALB took over the responsibilities of the FALB insofar as rehabilitation of veterans was concerned, and thereafter the latter organization passed out of existence. It is concluded that the FALB was an organization connected with the Communist Party which functioned to raise funds and provide services in connection with the Party's program involving the ALB and also functioned as a propaganda outlet for the Party with respect to this operation.

FORMATION OF RESPONDENT

In 1937, Budenz participated in the first of a series of Politburo discussions about organizing the veterans of the

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[fol. 109] ALB upon their return from Spain, in which Earl Browder and Robert Minor among the Politburo members were most active. The directives to organize, direct, and control the VALB were issued over a period of time at meetings of the Politburo beginning in late 1937, and Budenz was present when A. W. Mills (also known as Milgrom) and Fred Brown, a Comintern agent* (also known as Marini and Alpi) were designated to aid in the formation and supervision of the VALB. From reports made by Brown, Mills, and Browder, and attendance at Politburo meetings, Budenz gained knowledge of Brown's activities in carrying out this assignment.

Following Fred Brown, Sam Milgrom and Steve Nelson functioned as the liaison with the Politburo for directing the formation and later the supervision of the VALB, but in 1941, Roy Hudson, a Politburo member, was delegated a part of this supervisory responsibility. Other Party functionaries ordered by the Politburo, at meetings which Budenz attended, to work in the formation of or in connection with the VALB, include Phil Bard, Robert Raven, Paul Burns, John Gates, and Felix Kuzman. Kuzman also acted as a courier for Comintern agent Eisler.

* It is established that Gerhart Eisler was a Comintern representative in the United States and that Fred Brown and J. Peters were on his staff. J. Peters headed Party underground activities sponsored by the Comintern and was liaison between the Comintern apparatus and the Soviet secret police operating in the United States.

In early 1938, Budenz as a Party official was told by the Party that the VALB had been tentatively formed and that Paul Burns, a Party functionary, was its National Commander. Burns was also made Associate Editor of the *Midwest Daily Record* in Chicago in 1938, under Budenz who was the Editor, and pursuant to instructions from the Politburo, Budenz gave Burns time off from this function to perform his duties as National VALB Commander. During the year Burns told Budenz that the original VALB officers, including himself, had been hand-picked by Brown in New York, and that he was in touch with Brown and Mills. Budenz during this period was also a member of the Party's Illinois State Committee and as such was pres-

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[fol. 110] ent on several occasions when official reports were made by Burns to the Illinois District Bureau on the progress of the VALB organization in the Chicago area. Burns also wrote a number of columns which were published in the *Midwest Daily Record* on the necessity of expanding the VALB. Meanwhile, throughout 1939, Brown and Earl Browder continued to make progress reports to the Party on the VALB.

Lautner, as a high Party functionary, also was present when plans for setting up the VALB were reported by Earl Browder to a Central Committee meeting of the Party in 1938. Later, Lautner had contact with the VALB through his Party activities and also participated in Party decisions pertaining to it.

During the formation of the VALB in 1937-1938, the Politburo instructed Comrade Chester to advance money for meetings, publications, and other needs until it became established. The constitution of the VALB was discussed at Politburo meetings in 1939, and after being submitted to the Party's lawyers was approved by the Politburo.

Based on official Party reports made to the Politburo, National Committee meetings at which he was present, and from Browder's statements and discussions, Budenz establishes that the principal objective and major purpose was for the VALB to be an integral part of the CPUSA apparatus, a dynamic, symbolic force to advance Marxism-Leninism and Communist influence in the United States, particularly by keeping alive the struggle for a Communist

victory in Spain* as the back door to Latin America and at the same time providing a young, vigorous group of men to carry out Party programs. Lautner states that the respondent organization was controlled by the Party, and in corroboration of Budenz, establishes that the VALB constituted an organization from which the Party drew functionaries for use on all Party levels and for work in other Party-controlled organizations. Respondent, states Laut-

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[fol. 111] ner, is a reservoir of personnel for Party functionaries. (See "Respondent's Members Promoted Within the Party," *infra.*) This was emphasized by Earl Browder's speech to the plenary session of the Party's National Committee in December 1938, which clearly indicates that the returning veterans were considered a Party cadre who must be integrated into community life so as to make possible their maximum future contribution to the Party's cause:**

> "I must say a word of emphasis on the question of the veterans of the Lincoln Brigade, especially those who are coming back soon. Some eight or nine hundred are on their way. *These boys . . . are coming back enormously enriched in experience. . . . We must in an organized way, very patiently and systematically, help establish the guarantees everywhere, that each one in his own community, in his own state, is absorbed back into the everyday life of our people so that the great contributions they have to make to us will become possible. They are not coming back with these great contributions all tied up in a bundle in their*

* In furtherance of this, one of the VALB's primary functions is to stimulate general support throughout the United States as well as within the Communist movement here for the Communist movement in Spain, rallying the struggle around leading Spanish Communists such as La Pasionaria, which is, as later discussed, but another phase of the CPUSA's activity which earlier involved sending the ALB to Spain, and is in pursuance of the same ultimate objectives.

** This is consistent with veterans functioning as focal points for the Party's united front tactic for, as will be shown *infra*, they are collectively and individually used as symbols of anti-fascism by which the Party gains support and reaches elements not otherwise available to it.

pockets ready to pull out and show you; only in after years will you be able to measure the tremendous addition to our forces that these boys are going to be. Potentially they are a great force, but how much of that we realize depends upon how seriously we take this problem. . . ." [Emphasis added.] (P. 23, Pet. Ex. 11.)

In addition we now treat with the testimony of petitioner's witnesses Herrick, Maken, Harris, Gladnick, and Horan which also establishes that the VALB had been set up by the Party prior to their return.

Herrick's first contact with the VALB took place in early 1938, when, pursuant to a communication signed by Bob

[fol. 112] Klonsky,* he attended a VALB meeting with other returned veterans and found Klonsky presiding. Several veterans questioned Klonsky's right to preside, whereupon Steve Nelson (former Political Commissar who had been co-opted to the Party's Central Committee in December 1937) explained that Klonsky's function was only temporary and that everything would be taken care of, whereupon the controversy closed. Nelson's statement was interpreted as an order from the Party that Klonsky preside initially, and Herrick explains that Nelson spoke with "ultimate authority" in that all present knew him to be a member of the Party's Central Committee.

When Maken's group arrived in New York in December 1938 (the first large contingent to return from Spain), the VALB had already been set up in embryonic form. Maken, presumably eligible for membership, was told by Allan Johnson in the VALB offices that before he could join the VALB he must see the Secretary of the Party's National Control Commission,** whereupon he went to Party head-

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* Klonsky, a Party functionary, was one of the first able-bodied men repatriated from Spain. As such, he participated in setting up the VALB and became a provisional officer of respondent.

** Maken had been expelled from the Party while on board the *Ansonia* returning to the United States from Spain. This evidence, showing the necessity for clearance by the Party, contradicts Wolff's direct testimony that the only qualification for membership in respondent was that a man had fought in Spain and wanted to be a member. The latter is not credited.

quarters, was interviewed, and there were cited to him his minor disagreements with Party superiors in Spain, as well as the "wisecracks" and "satirical ditties" he had composed concerning Party functionaries who were in responsible positions in the ALB, such as Joe Brandt, George Watt, and John Gates. He was told that by working in Party organizations, such as the VALB, he could win his way back into the Party, if after a suitable period his work was worthy and his attitude correct (this being a Party control task). He became a VALB member in early 1939, and received a membership card. Fred Keller, Paul Burns, and Danny Groden were VALB officers at this time, and Jack Bjoze, John Gates and Steve Nelson were active members, all of whom are established to have been CPUSA functionaries.

Upon his return, witness Gladnick was taken to VALB headquarters for a conference with Bill Lawrence, a high Party functionary, who inquired as to Gladnick resuming active Party work, stating that the Party wanted to know as soon as a veteran returned of his intentions insofar as the Communist movement was concerned. Thereafter, Gladnick immediately began attending VALB meetings.

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[fol. 113] In early 1939, having been in contact with Paul Burns, who was then VALB National Commander, Harris went to Chicago, where he met Joe Gibbons, a Party functionary in the VALB's Chicago office, and thereafter joined the VALB and received his first membership card.

After arriving in New York City in December of 1938, Horan joined the VALB and received a membership card. He then went on to Chicago and found the VALB post there already set up and sharing offices with the FALB. Oscar Hunter, a high Party functionary, took over shortly thereafter.

Soon after their return to Chicago, Morris Childs, Illinois Party State Secretary, addressed Horan's group, saying it could now be told that the Party had recruited the men to go to Spain and had also organized the VALB. He stated that the men who had been in Spain were developed politically and were welcomed back to appropriate work which would be found for them within the CPUSA.

Respondent's witness Wolff's testimony that the VALB organization which existed prior to the return of the main body of Americans from Spain had no meaning for him as an organization does not refute the extensive evidence set forth above.

Based upon the foregoing evidence, which is uncontradicted, it is found that respondent was formed by, and with the aid of, the Party in 1938, prior to the return of the main body of veterans; that the Party established respondent under its control, installing a Party functionary as its National Commander; and that respondent was established for the purpose of affording the Party a means whereby it could continue its efforts on behalf of communism in Spain and hence the world Communist movement, and to provide itself with a dynamic organization of tested cadres for utilization in advancing Party programs and objectives in the United States.

ORGANIZATION OF RESPONDENT

Respondent, except for honorary members (discussed later herein), is an organization whose membership is comprised exclusively of veterans of the ALB. Having been formed in the manner shown, the "Third National Conven-

[fol. 114] tion" of the VALB took place on December 23-24, 1939, the proceedings of which constitute Petitioner's Exhibit 59. Wolff testifies that although designated as the Third National Convention, it was actually the first, and that the earlier ones were presumably held by the FALB.* (Insofar as this convention is the first concerning which evidence was adduced, it will hereinafter for convenience be called the first or initial convention.)

In 1939, months prior to its being held, David McKelvy White** reported to a meeting of the Politburo in Chicago

* During this convention the VALB assumed the responsibilities of the FALB insofar as rehabilitation of veterans was concerned; thereafter the VALB continued to solicit support for this purpose from the same groups and the same people as the former organization, and also assistance for Spanish refugees and other International Brigadiers.

** White was also a VALB member; however, Brown and Mills, who also reported on the VALB, were not. Additional reporting by the VALB members to the Party is treated later herein.

on respondent's initial convention. Wolff, established as a Party functionary, opened this convention and was Chairman of the Convention Arrangements Committee. White, who, as stated, had earlier reported to the Politburo concerning this convention, delivered the main report for the VALB's Executive Committee.

The Convention Presiding Committee of five persons included David White, Chairman, Milton Cohen, and Vaughn Love, all Communist Party members. The Convention Committee consisted of seven persons and included John Robinson, Chairman, Milton Wolff, and Fred Keller, all Party functionaries.

A National Executive Committee of nine members was chosen, of which three, namely, Carl Geiser, Bob Raven, and Archie Brown, are identified herein as Party members or functionaries.

Unanimously elected as national officers were Milton Wolff, National Commander, Luchell McDaniels, Adjutant

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[fol. 115] Commander,* Gerald Cook, Secretary-Treasurer, and Leonard Levinson, Editor of the *Volunteer for Liberty;* Wolff and Levinson being Party functionaries.

As shown by Petitioner's Exhibit 59, a constitution was adopted by the VALB at this convention. Wolff's testimony that he was on a committee which dealt with proposals concerning the VALB's constitution and that he personally participated in its drafting does not refute the evidence that it had the prior approval of the Politburo (Wolff himself being a Party functionary). He also states that respondent has paid no particular attention to its constitution in recent years and respondent's witness Morgan was apprised of its existence for the first time under cross-examination. It is not now a serious document.

The VALB at this convention adopted as the title of its official organ, which states its views and policies, *Volunteer for Liberty.*** This organ is published for the national or-

* The office of Adjutant Commander, according to Wolff, never functioned. Wolff, since 1939, has been respondent's National Commander.

** This is the same title as the official organ of the ALB. Copies of this publication constituting respondent's official organ comprise Pet. Exs. 86, 95, 97, 99, 102, 107, 109, 111, 142, 143, 144, 145, 146,

ganization in New York and there has also been a Chicago supplement by the same name.

The official emblem adopted by respondent, a three-pointed star, was also the emblem of the "World People's Front" of the international Communist movement.

Shortly after this convention, on January 10, 1940, the VALB's certificate of incorporation (Pet. Ex. 61) was filed with the Secretary of New York State* and was subscribed by Fred P. Keller, Jr., Paul Williams, Milton Wolff, David McKelvy White, and Joseph Francis Rehill, as directors. As stated, Wolff, Keller, and White are established to have been Communist Party functionaries.

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[fol. 116] Respondent's so-called local posts were provided for in its constitution and were organized and maintained in various cities** throughout the country for various periods of time, and respondent so admits in its answer. There is no substantial evidence that many of these posts have continued in existence as such with the exception of those in Chicago, Los Angeles, New York, and San Francisco. However, as shown later herein, VALB members in these and other cities function in conformation with respondent's national headquarters in New York City.

Horan and Harris establish that the Chicago post was connected with the national office of the VALB, that it received correspondence from national headquarters, and that members of the post were on the national mailing list and received correspondence from national headquarters as well as from the Chicago post; that it supported the national office financially and was assigned quotas of

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147, 148, 149, 195, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 224, 225; Resp. Exs. 2 and 41. (See *infra* for Party members as Editors and Editorial Board members of this publication.)

* Respondent's status as a New York corporation thus created was dissolved by proclamation of the Secretary of State, published October 15, 1952, pursuant to section 203-A of the Tax Law. See "Discussion of Law," *infra*, for further details.

** New York, N. Y.; Chicago, Ill.; Philadelphia, Pa.; Detroit, Mich.; San Francisco, Calif.; Los Angeles, Calif.; Cleveland, O.; Baltimore, Md.; Washington, D. C.; Milwaukee, Wis.; Seattle, Wash.; Portland, Ore.; Pittsburgh, Pa.; Minneapolis, Minn.; St. Louis, Mo.; Boston, Mass.; and New Haven, Conn.

funds to be raised which it undertook to do. Membership cards were issued by the national office of the VALB and not by local posts.

Wolff testifies that the major concentrations of veterans outside New York City are in San Francisco, Los Angeles, and Chicago; that such posts as have existed were autonomous and were not organized from national headquarters. He testifies that reference continued to be made to posts long after such ceased to exist. As this testimony is outweighed specifically with respect to the Chicago post and is contradicted by other credited evidence hereinafter set out, it is concluded that local VALB posts function in conformation with respondent's national headquarters and in effect constitute an integral part of the respondent organization. To the extent respondent's evidence conflicts with this finding it is contrary to the weight of the evidence on the record as a whole.

Of further significance concerning respondent's character and organizational makeup is its recognition of certain individuals by making them honorary members, or conferring on them honorary positions. For example, an Hon-

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[fol. 117] orary Presidium of 10 persons was selected at its first convention, six of whom are established to have been functionaries of the Comintern and/or the Spanish Communist Party, namely, Modesto, Lister, Diaz, La Pasionaria, Andre Marty, and Vicente Uribe.

Greetings were sent in the name of respondent's National Convention to Andre Marty, La Pasionaria, Lister, Modesto, the Popular Front Government of Chile, and the People's Government of Finland.*

In addition, it is established that Gerhart Eisler, Earl Browder, Robert Minor, Paul Robeson, and Joseph North were honorary members of the VALB and, except for Eisler, who was a Comintern agent, all are established to have been CPUSA members or functionaries.

Pertinent to the Party's purposes with respect to respondent, as earlier discussed, Party functionary David White, writing in the convention issue of the *Volunteer for Liberty*, January 1940 (Pet. Ex. 102), shows that VALB

* As shown later herein in this government was supported by the Communist movement in opposition to the Mannerheim Government.

members were considered shock troops for the defense of "peace" and "democracy" who set the "standards" by which others are judged, thus evidencing further that respondent was a symbol of those who had proved their devotion and loyalty to the Communist cause.

The Party in its organ *New Masses* of January 9, 1940, through Editor Joseph North, a Party functionary and honorary VALB member, who a few days previously at respondent's initial convention pledged Party support to the VALB, uses the terms "democrat" and "democracy" in publicizing respondent while setting forth the Party's conception of Spain's importance to South America, which is embodied in respondent's policies and program:

> "They saw that victory for the Spanish republic and the Spanish people would greatly strengthen the cause of peace, for it would turn the tide of international lawlessness and fascist aggression. *They saw it would greatly strengthen democracy, not only in Latin Amer-*
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>
> [fol. 118] *ica, where nations and peoples look to Spain as their mother country, but throughout the whole world . . .*
>
> "That is why they went to Spain. That is why they carry on now that they are home from Spain. *Hard-boiled, practical democrats, they knew democracy*—the will of the people—had to be fought for. They were the plain, practical youth of America, *most of them had had experience in the people's organizations . . .*" [Emphasis added.] (P. 10, Pet. Ex. 9.)

Concerning the foregoing language "practical democrats, they knew democracy," Lautner explains that as used here this means to a Communist democracy under Soviet rule or a Communist regime and that the term "people's organizations" means Party-controlled organizations. That this significant relationship of Spain to Latin America is comprehended in respondent's activities is further evidenced by the presence of two delegates from Mexico at its first convention. One such delegate, Garcia Val, an organizer of the Fifth Communist Regiment in Spain, in a "report" to this convention, shows that the defense of the Soviet Union, clearly established heretofore as an objective of the anti-fascist front involving Spain,

was an objective now recognized and supported by respondent:

> "The world was astonished by the resistance of the Spanish people. The 'democratic' imperialists were alarmed by it. . . .
>
> ". . . *The existence of Republican Government in Spain was the greatest stumbling block in the way of the imperialists. Just imagine what the existence of such a government would mean today in the present war? And its existence would be even more dangerous in case of an anti-soviet war, which is the goal of world reaction. The imperialists did not dare launch their second World War until the Spanish people had been conquered. . . .*" [Emphasis added.] (P. 26, Pet. Ex. 59.)

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[fol. 119] Further, the defense of the Soviet Union was now linked, as before, with Spain:

> "Lt. Col. Val closed his report by pointing out how all the enemies of the Spanish people, both those who fought it openly and those who stabbed it in the back, are no [sic] engaged in organizing an international attack on the one country which gave substantial disinterested aid to Spain—the Soviet Union." (P. 29, Pet. Ex. 59.)

Based on the foregoing, it is found that respondent's initial convention was held under the domination and control of the Party, that its principal officer (National Commander), who had been installed by the Party, was succeeded at this convention by another Party functionary; that respondent's policies adopted at this convention were in the respects above indicated but a continuation of those policies embodied in the ALB operations as an integral part of the worldwide Communist united front; and that as indicated and later shown, respondent actively undertook to continue the implementation of these policies.

PARTY REPRESENTATIVES OFFICERS OF RESPONDENT

As shown earlier herein, representatives and members of the Party's Politburo organized and supervised the for-

mation of respondent, installing as its first National Commander, Paul Burns, a Party functionary. At its first convention in 1939, the principal participants were Party functionaries.

Of the four national offices provided for in respondent's constitution, namely, National Commander, Adjutant Commander, Secretary-Treasurer, and Editor of the *Volunteer for Liberty,* one, that of Adjutant Commander, never functioned. Since the 1939 Convention until the present, Milton Wolff, a Party functionary, has been National Commander, who he testifies is the highest principal officer, whose function it is to help make and implement the organization's policies.

The other principal officer of the VALB is the Executive Secretary, who was formerly, as provided in the constitution, designated Secretary-Treasurer.* It is established

[fol. 120] that since 1940, this office has been occupied during the years indicated by the following, all established to have been concurrently Party members or functionaries: Irving Goff, 1940-41; Jack Bjoze, 1942-43; Harold Smith, 1944; Leonard Lamb, 1944-45; David McKelvy White, 1945; Edward "Frenchy" Robinson, 1945; Jack Bjoze, 1946-49; Moe Fishman, 1950 to present. Insofar as the record shows, the position of Editor of respondent's official organ, the *Volunteer for Liberty,* which has been issued on an irregular basis, was occupied from 1939 to 1941 by Leonard Levinson; during 1941 by Al Prago; and during 1946 and 1947 by Harold Smith; all established to have been Party functionaries. Levinson, Prago, and Smith also constituted its Editorial Board in 1944, and Jack Bjoze, a Party member, was on its so-called Editorial Staff in 1947.

Along with publications put out by other organizations which he states the Communist Party controlled, the *Volunteer for Liberty* was delivered to Budenz, as Editor of the *Daily Worker,* for his examination and suggestions.

Petitioner's witness Horan, who in 1939 was Editor of the Chicago supplement of the *Volunteer for Liberty,* was

* The evidence shows, and Wolff so testifies, that the Executive Secretary is now and for the past few years has been the principal operating officer, handling finances as well as most other organizational business.

supervised by a committee which included a Party functionary, and in actuality Horan had nothing to say about the content of the publication. This supplement, too, was distributed to the Party.

The following Party representatives have been on respondent's National Executive Committee or National Board: Vic Allen; Barney Bailey; Alvah Bessie; Moe Fishman; Louis Gayle; Carl Geiser; Irving Goff; Daniel Groden; Fred Keller; Felix Kuzman; John Gates; Vaughn Love; Edward "Frenchy" Robinson; Milton Wolff; Archie Brown; and David McKelvy White.

In 1952, respondent's nine-member Executive Committee included six Party members, namely, Irving Weissman, Steve Nelson, Harold Smith, Vaughn Love, Daniel Groden, and Alvah Bessie.

Respondent has operated for the past five years into the present through two principal active officers, Moe Fish-

[fol. 121] man, Executive Secretary, and Milton Wolff, National Commander. The position of Executive Secretary has not been an elective post for many years and Wolff testifies that he personally got Fishman to take the job.

Syd Harris, who at present is Secretary of respondent's Chicago post, attended Communist Party meetings with witness Horan, and is a Party functionary. Horan establishes* that at various times there was a person in the Chicago post designated as a Party representative who would bring instructions from the Party. Sigurd Simonsen was such a Party representative and was replaced with Moe Teitelbaum in 1941, at a meeting in VALB offices by Alfred Wagenknecht (a Party functionary of very long standing, then a member of its Illinois State Committee but not of the VALB). Among other Party representatives in the Chicago post were Izzy Tivin, Ernest Romero, Gil Lang, and Milton Cohen. At least one Party representative was present at every meeting of the Chicago post which Horan attended. Each was conspicuous by his manner and his statements, usually instructing them that the

* Except for his period of active military duty, Horan has been in contact with the Chicago post from about the 15th of December 1938 until the 25th of February 1954.

Party had decided that the VALB should undertake certain activities.

During Horan's membership, the Chicago post never functioned autonomously; the post received orders principally through the Chicago District and Illinois State organizations of the Party, but also from Felix Kuzman and from the national headquarters of the VALB.

Under cross-examination, respondent's witness Wolff claims the Constitutional privilege against self-incrimination when asked if he had ever joined a political organization in Spain; if he was ever a member of the Communist Party in Spain; if he was a member of the Communist Party or Young Communist League at that time; whether he had ever been a member of the Party or the Young Communist League; whether he ever attended any Marxist-Leninist school organized and supervised by the National Committee of the Communist Party or the Party's School Commission; whether he had ever read the book *Foundations of Leninism* by Stalin; and if he had ever known Budenz, Lautner, Matusow, Romerstein, or Huber, prior to their appearances as witnesses for petitioner in this proceeding.

Under cross-examination Wolff identifies Danny Groden, Jerry Cook, Luchell McDaniels, Irving (Toots) Fajans,

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[fol. 122] Irving Goff, Leonard Levinson, Al Prago, Milton Felsen, Jack Bjoze, Ken Bridenthal, Harold Smith, Edward "Frenchy" Robinson, Hy Wallach, Dick Fein, Phil Bard, Harry Mann, Felix Kuzman, and Moe Fishman as officers or functionaries of the VALB, but when asked whether or not he knows these persons to be members of the Communist Party, he claims the same Constitutional privilege. Thus petitioner's evidence establishing that the officers and members of respondent above so found are Party members is left uncontradicted. Moreover, respondent's Executive Secretary, Fishman, was present in the hearing room assisting respondent's counsel during part of the hearing and, although identified as a Party functionary, and obviously available to respondent, was not called as a witness.*

* Respondent excepts to findings in the Recommended Decision that some twenty-odd of its named officers and members are shown

Accordingly, it is found that without exception respondent's principal active officers, since its inception, have also been functionaries and representatives of the Party, as have a substantial number of its responsible active subordinate officers.

RAPPORT WITH THE PARTY

In addition to the overwhelming predominance of Party functionaries in high offices of respondent since its inception and the complete domination of its two-man national officer staff, Wolff and Fishman, the past several years, the record also establishes that a substantial portion of respondent's identified membership is comprised of active Party members, some of whom are also high Party officials. There is considerable evidence showing Party activities of VALB members which evidences that their dedication to the Party and its principles is such that they are amenable to and in fact support Party control and operation of respondent by Party representatives for Party purposes.*

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[fol. 123] The nature of this evidence will simply be illustrated here, but we have also in this regard considered the evidence later set forth dealing with the promotion of respondent's members within the Party. VALB members are shown to have: taught Marxism-Leninism within the Party; recruited for the Party; brought charges resulting in enforcement of Party discipline including expulsions from the Party; been featured speakers at Party meetings and rallies; and to have actively filled a number of official Party positions ranging from Branch Organizers to Na-

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to be Party members or functionaries, as being unsupported by or contrary to the evidence. These exceptions are hereby overruled as lacking in merit, except with respect to Sterling Rochester and Robert Colodny.

* Respondent's exception to this type of evidence is treated under "Discussion of Law," *infra*. As there found, we hold that since the vast majority of respondent's officers are Party members as is a substantial portion of its membership, the activities of these persons are in many respects directly chargeable to respondent which can only act via its officers and members.

tional Committee members. Their Party activities have spanned respondent's entire existence into the present.

In addition, there has been continuous recognition of the VALB, its officers, and members by the Party; and acceptance thereof and acquiescence therein by respondent is shown by a rapport between the two organizations that amounts to a knowledgeable hand-in-glove relationship. For example, in December of 1938, although not a Party member, Gladnick was admitted to a Young Communist League meeting solely upon the basis of his VALB button, although others were required to show their YCL membership books to gain admittance. Also, the *Daily Worker* of February 10, 1939 (Pet. Ex. 256), in reporting the "significant" part played by "Spanish veterans" in the second annual New York State Convention of the Young Communist League, proclaimed that "Headed by George Watt, brilliant Political Commissar, Milton Wolff, who rose to the rank of Major in the Loyalist Army, and many others, the vets will resume their fight for democracy back in their native land."

That Wolff's position as VALB National Commander, which he assumed at respondent's initial convention in late 1939, in fact constituted a Party activity is further evidenced by his reporting in Budenz' presence on the initial convention at an enlarged meeting of the Party's National Committee in early 1940, at which admittance was restricted to those holding a numbered card issued from Party headquarters, indicating they were Communists.

Representatives from the VALB reported to the Party's National Committee after its formation and during the entire time Budenz was in the Party (until 1945). Such reports were given on most occasions by a Party member who was also a VALB member, but on occasion a non-VALB member made the report, as in the case of Roy Hudson, who functioned as the Politburo representative to the VALB. It was common custom, according to Budenz, for the Politburo to have a representative working in liaison

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[fol. 124] with members of other organizations. Robert Raven, a VALB member, also made reports concerning respondent to the Party's National Committee during this time. There were constant reports to the CPUSA through

the years on the VALB, some specifically devoted to it, and others including it as a part of a broader report of Party activities.

John Gates participated in the Party's National Committee meetings in 1940 and 1941, where Bob Minor and others reported on the VALB in witness Lautner's presence, and on numerous occasions singled out for special mention VALB members, including top Party leaders John Gates and Steve Nelson, among others.

Budenz establishes that the Politburo issued instructions to the VALB, as indicated by Roy Hudson's report at a Politburo meeting in the summer of 1941, on the Browder Brigades, which was a drive to increase the circulation and support of the *Daily Worker,* wherein he stated that the VALB should be instructed and ordered to take the initiative in this drive in order to give stimulus to the rest of the Party's membership.* Other such instructions were given.

Respondent, in its official organ, the *Volunteer for Liberty,* June 1944, acknowledged and highlighted the participation of its members as Party officials** in the Party's 1944 national convention at which the Party converted to the Communist Political Association:

> "About twenty Lincoln Veterans were delegates to the convention. Bob Thompson was elected to the Presiding Committee which served as the nominating committee and to the Resolutions Committee; Steve Nelson served on the Constitutional Committee. Among the other Lincoln men were David McKelvy White, Bill Lawrence, Jim Bourne, and Adam Kilpatrick.
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> [fol. 125] "Browder was elected president of the newly-formed CPA. Eleven vice-presidents headed by William Z. Foster were also elected, including Bob

* Respondent's participation in this activity is discussed later herein.

** As this exhibit indicates, VALB members evolved as top functionaries, which, as shown later herein, was due to recognition of their dedication to Party principles.

Thompson. On the National committee of 40 are veterans Steve Nelson and Johnny Gates (on leave in the armed forces.) Bill Lawrence and Joe North are alternates."* (P. 4, Pet. Ex. 149.)

"Frenchy" Robinson told Maken in 1945 that he (Robinson) could get Maken reinstated in the Party and also in the VALB, as he was now high in the Party and, therefore, his recommendations to the VALB were accepted.

In 1946, VALB member Steve Nelson was made Chairman of the Party's Nationality Groups Commission and discussed Party problems with members of the VALB, including Jack Bjoze, at Party headquarters in New York City.

In late 1946, in company with Max Parker, Huber attended the Fifth National Convention of the VALB in New York City, which opened with the singing of Spanish and Red Army songs. Seated on the stage were Milton Wolff, Paul Robeson, Benjamin Davis, and representatives of Poland, Czechoslovakia, Yugoslavia, and the Soviet Union. Davis brought greetings to this convention from the Party's National Committee, of which he was a member, and Paul Robeson, also a Party member, spoke, telling the delegates to be proud of being Communists.

That respondent approved and welcomed the participation of its members who were high Party officials is further shown by witness Harris who, upon instructions from Jack Bjoze, then respondent's Executive Secretary, visited Bob Thompson at Party headquarters and solicited his more active participation in VALB affairs.

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[fol. 126] Based on the foregoing, viewed in the light of the evidence showing Party representatives in respondent and the evidence later herein set out showing the advance-

* This article goes on to relate with approbation, as found earlier herein, that the ALB was a part of the "party's history," adding: "On display at the convention was a photographic exhibit covering twenty-five years of the party's history. Of particular interest was a section on Spain which depicted scenes of Lincoln Brigadiers in Spain and the mass demonstrations of the American people supporting the Loyalist cause." (P. 4, Pet. Ex. 149.)

ment in the Party of respondent's members and the record as a whole, it is found that respondent maintains a rapport with the Party, primarily involving activities of its officers and a substantial segment of its membership who are Party members, which places respondent in a knowledgeable position of subservience to Party control and Party purposes.

RESPONDENT'S MEMBERS PROMOTED WITHIN THE PARTY

We will now treat with the evidence relating to the promotion of respondent's members within the Party. This evidence is particularly significant in view of the facts set out heretofore concerning the ALB, its function and purpose. It evidences further that respondent is what the Politburo planned, namely, a Party instrumentality of dedicated, active Party members, to be used to advance the Party's programs and objectives.

From time to time in Lautner's presence at Party meetings, Party leaders singled out members of the VALB as the so-called "flower" of the Party, the "force that fought and proved their loyalty and steadfastness in the face of danger for party ideology," and who had demonstrated loyalty in carrying out Party assignments (Tr. 365). Special consideration was given to promoting VALB members within the Party, and on numerous occasions Browder and other Party leaders emphasized that respondent's members had proved themselves as devoted and loyal members of the Party and deserved this special consideration with respect to promotion.

Horan was told by the Party prior to going to Spain that it would be a basis for further recognition and advancement. Upon his return, Morris Childs, Illinois State Party functionary, addressed a VALB meeting in January 1939, at which Horan was present, stating that they would receive recognition for what they had done in Spain. He stated that Paul Burns was with the *Midwest Daily Record;* Milton Cohen was being appointed as Chicago Section 3 Organizer; Izzy Tivin was being made Party Branch Organizer; Joe Gibbons was placed in the Party's Illinois State Headquarters; Dave Mates was Trade Union Organ-

izer for the Cook County Committee; Anthony Harbin, formerly a dishwasher at the Russian Cooperative Restaurant, was made manager of it; and that there were to be positions for all. Childs stressed that these men were not "arm-chair revolutionaries," and that they would put

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[fol. 127] new spirit into the Communist Party. VALB members present at this meeting in addition to Horan included Milton Cohen, Moe Teitelbaum, Izzy Goldstein, Paul Burns, then National Commander, Drosell, William Oderoka, and Oscar Hunter.

Budenz also establishes that VALB members were promoted within the Party including: Steve Nelson,* who was co-opted to the National Committee; Paul Burns, who was made Associate Editor of the *Midwest Daily Record;* and Alvah Bessie, for whom a position as a writer in Hollywood, California, was obtained through the Party apparatus there. Bessie was also placed on the editorial staff of *New Masses.* Budenz explains that while some who became functionaries received a salary, the main consideration was political as it was considered a high honor and a political advancement within the Party to be made a functionary.

Huber, too, shows that the VALB was always held in very high regard by the Party and that its members were always featured. Laudatory statements came from such Party leaders as Dr. Kaufman, A. A. Heller, Alexander Trachtenberg, and Benjamin Davis. This significance within the Party which membership in respondent carried is also shown by the fact that at a closed Party meeting of the Flatbush Club held in July 1945, Leon Dorski, nominated as a delegate to the Party's forthcoming New York State Convention, stated that he was a member of the VALB in listing his qualifications. Similarly, Lou Secundy, also a delegate nominee, stated by way of qualifications that he had fought in Spain with the ALB. Secundy was

* In the latter part of 1938, Earl Browder recommended the drafting of Steve Nelson to the Party's National Committee because of his outstanding work in Spain. After he returned from Spain, Nelson told Budenz that Browder had no choice in the matter, but was obliged by the people he was working with in Spain, i.e., the Russians, to co-opt him. Lautner, too, corroborates that Nelson was co-opted because of his work in Spain.

later made chairman of this Convention's Rules Committee of the Party.

Respondent's members who became organizers in the Party include Hy Wallace, Saul Wellman, Bob Thompson, Charlie Keith, John Gates, John Quigley Robinson, Red Drummond, Danny Groden, and Steve Nelson, among others.

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[fol. 128] The volume entitled *Volunteer for Liberty* issued by respondent in 1949 (containing the issues of the official organ of the ALB published in Spain) was sent through the Party's Literature Department to Lautner, he being a member of the Party's Review Commission, Security Officer for the New York Party, and a member of the Party's Cadre Commission assigned to carry out personnel policy. Lautner states that this publication was a "gold mine" for Party cadre work and that he was expected to use it for this purpose.

In this connection, Lautner establishes that after returning from Spain, John Gates became a member of the Party's National Committee and Secretariat; George Watt became a leading functionary and National Secretary of the Party's Control Commission; Irving Goff became Louisiana District Organizer; Milton Wolff was placed in the Civil Rights Congress as National Organizer; Lennie Levinson was made Regional Director of a Party region in New York; Hy Wallach* was made Security Officer of the Brooklyn Party (Kings County, New York); Lenny Lamb was made a functionary on the New York waterfront and was given Party security assignments by Lautner from time to time; "Frenchy" Robinson was given a position in Local 65 of the Distributive Trades Union and also integrated into the Party's security apparatus; Bill Lawrence was made Executive Secretary of the New York State Party and also a member of the Central Committee; Felix Kuzman was placed in the Civil Rights Congress as a functionary; Dave Gordon was made New York State Party Educational Director; Barney Rubin became a reporter and one of the

* In 1948, while Lautner was on the Review Commission, Hy Wallach was disciplined because he disagreed with the Party's Kings County leadership.

Editors of the *Daily Worker;* Bob Klonsky was made Executive Secretary for the Party in the Bronx, New York City, and later held the same Party position for Philadelphia, Pennsylvania; William Gandall was made a Party functionary in a transport workers union; Al Prago was put on the staff of the Jefferson School of Social Science and functioned as Party Educational Director in Queens County, New York; Jesse Wallach became Party Security Officer in New York County; Conrad Kaye was made a Party functionary in a butchers' union; Lou Secundy was promoted to become an organizer in Dayton, Ohio, in 1948; Saul Wellman was made Administrative Secretary of the National Review Commission and later appointed National

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[fol. 129] Auto Coordinator for Party activities in the automotive industry, functioning in Detroit; and Irving Weissman was made Party Organizer for the Buffalo-Niagara, New York area, and then District Organizer in West Virginia where, in the latter capacity, he was checked upon by Lautner in 1949.

All of the foregoing were promoted within the Party out of primary consideration of the fact that they were VALB members and as such, were tested, loyal Party personnel. To Lautner's knowledge, all of the foregoing persons continued to function in the Communist Party at the time he left it in January of 1950. Lautner as a Party functionary took it for granted that it was as a result of "desires and decisions" of the Party, that a number of Party members and functionaries were members of the VALB, explaining that many of these persons were members of the Party before going to Spain.

The Party, in addition to promoting VALB members, also arranged for VALB members who were trustworthy Communists to get jobs in unions, offices, or factories where a Communist fraction or functionary was located. Budenz shows that Party Branches were instructed to cooperate wherever possible to obtain employment for VALB members.

In January 1940, Dave Mates, Party Trade Union Organizer for the Illinois Cook County Party, arranged a job as a union organizer for Horan in Ottumwa, Iowa, through the Party there. Horan, although not then a member of

the Party, having left it in the summer of 1939, was given this job because his background and experience in Spain were known, and Mates believed him to be "all right" and felt he could be brought back into the Party. Petitioner's witness Herrick obtained a job in the Furriers' Union through the Party which, as later shown, was taken away because of his breaches of Party discipline.

Robert Raven, a Party and VALB member who had been blinded while a private in Spain, and who held no commissioned rank in Spain, was given the rank of lieutenant by the VALB after his return to the United States. Maken testifies that this was an example of the VALB and its Communist controllers arrogating unto themselves the authority to award commissions and titles as they found fit, in accordance with their political objectives. Raven also was provided with a livelihood by the Party and respondent and, as discussed later herein, this was the subject of Party disciplinary action involving respondent.

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[fol. 130] RESPONDENT AS A DISCIPLINED ORGANIZATION

As earlier herein found, ALB members in Spain were subject to Communist discipline. As the evidence now to be discussed shows, the respondent organization, formed by the Party and heavily staffed with Party representatives and having a substantial Communist element among its membership, is, after the fashion of the Party, a disciplined organization and requires of its members acceptance and implementation of its policies (which as later shown conform to those of the Party) under penalty of expulsion.

Respondent's internal discipline is shown by Maken, who, along with a few other VALB members in 1939 (during the Hitler-Stalin Pact), felt that Hitler should be actively opposed as Franco had been. This being contrary to respondent's policy (which conformed with Party policy), the group formed a rival organization composed of a few anti-fascist and anti-Communist veterans, calling it the "Veterans of the Abraham Lincoln Brigade, Anti-totalitarian," but after a few months the new organization was dissolved. This activity on his part led to Maken's expulsion from respondent; he was given no notice or hearing concerning his expulsion and was not present at the meeting which ex-

pelled him; significantly, a notice to the effect that he had been obtained through the Party in a furriers' union. Show- *Daily Worker.*

Upon Herrick's return from Spain, a job for him had been obtained through the Party in a furrier's union. Showing that respondent's discipline was understood to conform with the requirements of the Party, Herrick, who had been found in attendance at meetings of an anti-Communist labor organization by Irving Fajans, a Party and VALB member, was told to cease such activity or he would lose his job. He refused. Consequently, he lost the job and was expelled from the Party and became disaffected from the VALB. Herrick explains that they were one and the same thing, disaffection from one involved disaffection from the other.

Witness Hecht also shows that respondent considered as "sound members" those who were politically sound from the Party's viewpoint.

This is further evidenced by a number of other instances of record. At the first VALB meeting Gladnick attended upon returning, Dan Groden, a Party functionary, was in charge and there were complaints from the group in attendance that respondent was getting jobs only for those

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[fol. 131] members who were active in the Party. Subsequently, Gladnick was given a job in a union local and upon being asked to rejoin the Party, refused, and as a result shortly thereafter lost his job.

Fred Keller,* a Party functionary and active leader in the VALB, presided over an early meeting of respondent at which members were expelled. Maken describes Keller as a sort of Party whip, showing that he presented evidence

* Keller also gave the membership report to respondent's 1939 Convention, stating: "Vets are absent from Post meetings because: . . . They work in some other progressive organization . . . They are just sulking and out of contact with everything." (P. 24, Pet. Ex. 59.) The use of the term "progressive organization" in the foregoing, according to Hecht, refers to an organization which adheres to or reflects the Communist Party line. Those veterans who could not adhere to the VALB's policies but who did not become openly anti-Communist or anti-VALB were given a mild form of censure by VALB leaders, in that they were referred to as "sulking and out of contact."

at a VALB meeting which resulted in the expulsion of a member because of dissidence with the Party.

Dissident members of respondent were referred to as "deserters" by the VALB. This use of the term had no relation to honorable military service in Spain but was a term respondent used to brand members who opposed or dissented from its policy or line, as besmirching the memory of those who had died in Spain in the struggle against fascism.*

For example, at a meeting of the VALB in 1939, Gladnick disagreed with Steve Nelson, the principal speaker, over a political matter and was called a "Trotskyite," a "stool pigeon," a "deserter," and various other names which he states are used to label people who disagree with the Party line. As used by the VALB, Gladnick establishes a

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[fol. 132] "deserter" was one who did not follow the twists and turns of political line. This is further shown by a report to its 1939 Convention that the Philadelphia VALB post was having "difficulties with deserters." (P. 24, Pet. Ex. 59.)

New Masses of January 9, 1940 (Pet. Ex. 9), reporting Vicente Uribe's** address to respondent's initial convention, stressed that "He referred specifically to 'the renegade Ralph Bates' in discussing the enemies of the Spanish people." (P. 10, Pet. Ex. 9.) It is significant that Bates, a veteran of Spain, during this period (that of the Hitler-Stalin Pact) had also left the Party. Charles Keith, expelled from the Party in 1945, was within a short period also expelled from respondent.

Further in this connection, it is established that the term "isolate" is commonly used in Party parlance and refers

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* In this connection, petitioner's witness Maken has been called a deserter by respondent, although the record shows by documentary evidence that he was given an honorable military discharge in Spain and was never subjected to such a charge while there. Further, the record shows and respondent's witness Wolff testifies that there was no court-martial apparatus in Spain and that such charges of desertion in the military sense were not pressed.

** Former Communist Minister of Agriculture in the Spanish Republican Government.

to a Party practice of cutting off from all contact with Communists and others he might influence any comrade who is under suspicion or found guilty of disloyalty to the Communist organization. This is done by actions seeking to discredit and degrade. Budenz explains that this is a serious practice of Communists and is religiously adhered to. For example, even prior to Party leader Browder's expulsion in 1945, all members of the National Committee and other Communists in Party headquarters, upon encountering him, abstained from speaking to him. Budenz was similarly given this isolation treatment by former Party associates after he left the Party.

That this practice is also utilized by respondent is clearly shown on the record. It was applied to Maken after his expulsion from the VALB. After Earl Browder's expulsion from the Party, Harris, who had attended Party meetings with Browder and other members of the VALB, such as Harold Smith and Jack Bjoze, encountered Browder (honorary VALB member) from time to time but all abstained from any recognition of him whatsoever. Upon asking Smith, who had been very close to Browder, why he had not spoken to him, Harris testifies, "I got my ears pinned back for asking this question." (Tr. 2127.) Harris explains that as a member of the VALB he did not speak to Browder as it just wasn't done, and that he never saw a VALB member do so after Browder's expulsion from the Party.

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[fol. 133] In addition to the foregoing examples of internal discipline of respondent which, as shown, is based upon the requirements of the Party, the record also establishes that respondent is the recipient of and responsive to direct Party discipline. This is graphically shown by Lautner, who as a member of the Party's Review Commission in 1948, along with Rose Gaulden, handled charges brought before this disciplinary body by Robert Raven, who had been blinded in Spain, against the VALB for its failure to discharge certain obligations concerning his financial support which it had undertaken. One of Raven's charges was that he had been used as a tool by the Party upon returning from Spain, having been exploited on a national tour in which he raised many thousands of dollars, and now was not being cared for financially. Lautner

called in Jack Bjoze, a Party representative in the VALB, who promised the Party that respondent would fulfill this obligation, and subsequently a flower shop was purchased for Raven and his financial security guaranteed.

Concerning the VALB being subject to Party discipline and control, Lautner states that at any time the Party called upon respondent to carry out a certain function it did so, citing as an example its participation in a daily picket line around Foley Square in 1949, during the Smith Act trial of Party leaders. He explains that the Party's New York State Organization Commission planned a daily picket line where Party-controlled organizations were to picket on assigned days, and that the VALB as part of this plan picketed Foley Square as directed.

Further, the fact that Maken, then in difficulty with the Party, had to be cleared by the Party before he was allowed to join respondent, evidences, too, that respondent is under Party discipline.

Moreover, in addition to the foregoing evidence, we have given considerable weight to the fact that respondent's principal leaders and many of its members are dedicated Party members and in a number of instances high Party officials, and as such are subject to Party discipline and control.

On direct examination, Wolff states that the qualification for membership in the VALB was that a man had fought for the Loyalist cause in Spain and that at various times there were additional requirements, such as the payment of dues and supporting the organization's policy. Under cross-examination, he testifies that there have been expulsions from the VALB and also suspensions, while a determination whether or not to expel was being considered.

[fol. 134] Morgan testifies for respondent, "we can't expel anybody," as the members do not pay dues by the month or carry cards, stating that "if some guy is a rat like some of them have turned out to be," they wouldn't be allowed to join.

We find that the preponderance of evidence establishes that respondent is a disciplined organization after the matrix of the Party, and that it has and continues to be subject to and responsive to Party discipline, primarily

through its principal officers and a substantial portion of its membership who are Party members and functionaries.

PARTY SUPPORT OF RESPONDENT

Pursuant to section 13(f)(2) of the Act and the allegations of section III(2) and subsections of the petition, the evidence relating to the Party's support of respondent will now be discussed. It should be noted that, as treated in the Recommended Decision, respondent took specific exception to only one statement in the evidence set forth on this subject.

In considering this matter we have weighed the material and substantial aid rendered by the Party in the formation of respondent, discussed *supra*. In addition, the record establishes that substantive material support has continually flowed from the Party to respondent as shown by the evidence now related.

Gladnick establishes that on many occasions VALB members collected funds at Party meetings and that he, in late 1938, spoke before a meeting in the Bronx and collected funds which the Party Secretary of the unit forwarded to respondent.

Harris attended Party meetings where the Party aided the VALB in the distribution and sale of tickets to its social affairs, to annual dances, etc. The Party's New York Waterfront Section was usually allotted 25 tickets and sometimes as many as 50, which were sold from the floor at the Section meeting, and the money turned over to respondent.

Horan shows that solicitation cards, such as Pet. Ex. 94, were distributed extensively throughout the Party in Chicago in raising funds for the VALB.

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[fol. 135] In February 1942, respondent's Chicago post held a ball at Forresters Hall in Chicago and as a means of building up a new mailing list for VALB use arranged for a door prize which required that the names and addresses of those attending be entered on the ticket stubs. Izzy Tivin was assigned to and did sell tickets for this affair to branches of the Party, and Horan shows that this method of selling tickets to VALB affairs was customary.

At Party meetings which Huber attended, members were often urged by the Party Organizer to support all functions of the VALB. In 1940, during a VALB fund-raising drive, Huber's Party unit was urged to make public collections of money for the VALB, which was done by most of the members. At other Party meetings of Huber's branch, the members were urged to attend a rally to commemorate the founding of the Spanish Republic, at which Milton Wolff was to be one of the principal speakers, and a VALB meeting where Earl Browder was to speak.

Huber was told by Al Lannon at a meeting of the Waterfront Section of the Party that it was a Party directive from the State Committee that they should support the American Rescue Ship Mission,* an undertaking of respondent.

Charlotte Honig, a Party functionary, ran a beverage compa , selling primarily to the Party organization in New York City, in which she employed VALB members, including Max Parker. She gave a certain portion of the profits to the VALB.

Money which Honig took to the VALB the following day was raised at an affair for returning ve rans in 23rd Street and Seventh Avenue in 1940, in wh h Charlotte Honig, Paul Crosby, Party National Committee member, and other Party functionaries participated.

Huber, as a Party member, pursuant to arrangements made at his Party meeting, took part in VALB picket lines, one in front of the Spanish Consulate in 1946, and one near 48th Street and Broadway, both calling for the breaking of USA relations with Franco Spain.

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[fol. 136] In 1945, at a meeting of the Party's 11th A.D. Club, whose headquarters was in 2744 Broadway, Goldie Young, Party Organizer, urged all comrades to support the VALB's annual Christmas dinner and dance.

At a VALB dinner in 1945, of which David McKelvy White was chairman, Charlotte Honig contributed $1,200, the Communist Political Association gave $300, Charlie

* Pet. Ex. 69 is an application for a license to solicit funds for this mission, filed by the VALB with New York City authorities in November 1940.

Krumbein, Treasurer of the New York Party, gave $100 and Regina Wilson from the James Connoly Branch of the Party, gave $100 to the VALB. The total collection came to around nine or ten thousand dollars.

In 1946, Carl Geiser, a Communist Party member, Hy Wallach, a member of the Brooklyn Party, and Lohman, a member of the New York State Committee, were in charge of a party given in Geiser's home, where drawings donated by William Gropper, also a Party member, were auctioned off for the benefit of the VALB.

At enlarged National Committee meetings during Budenz' time in the Party, it was stressed that the Party and Party members should support respondent in all its activities in advancing the Party's interest, and see that it was financially supported.

Lautner, too, establishes that during his tenure in the Party, it supported fund-raising drives of the VALB by permitting its members to solicit financial support within the Party and by assigning blocks of tickets to be sold within the Party for VALB affairs. He shows that decisions concerning support for respondent were made within the Party's New York State Commissions and that such support was a routine thing.

Another important means by which the Party aids respondent is through its official organs. Budenz establishes that as *Daily Worker* Editor (from 1940 until 1945) he was under direct instructions from the Politburo to give publicity to the VALB and was given specific instructions in this connection on a number of occasions. He further shows that it was Party policy, whenever necessary to feature the VALB, to give it special publicity through the *Daily Worker*. In carrying out his instructions and this policy, he explains that it was taken for granted that no anti-Communist would speak under VALB auspices, although such a speaker might be a non-Communist. And, to his knowledge, no anti-Communist ever did speak at a VALB affair.

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[fol. 137] The record is replete with such support given to respondent through favorable publicity or "poof articles" in Party organs, primarily the *Daily Worker* and the *People's Daily World*, boosting the VALB and urging sup-

port for its affairs and rallies, fund-raising and otherwise, during respondent's entire existence until the present.*

Joseph North, Party functionary and Editor of *New Masses,* former correspondent for the *Daily Worker* and liaison agent in Spain, and an honorary VALB member, pledged his personal support and that of the *New Masses* and its readers to respondent at its initial convention, and as shown by Pet. Ex. 9, *New Masses,* January 9, 1940, such aid was forthcoming.

In publicizing respondent the Party has constantly emphasized that it has a preferred position as the symbol of anti-fascism, particularly with reference to Spain, thus building respondent's stature to make it a more effective means of obtaining support for basic Party programs, as later herein shown.

As one example, an editorial in the *Daily Worker* of April 6, 1945 (Pet. Ex. 169), states:

> *"There is one group of American citizens that has a special right to be heard on the subject of our relations with Spain . . . We refer, of course, to the Veterans of the Abraham Lincoln Brigade.*
>
> • • •
>
> *"We feel this [VALB] dinner merits the particular backing of our leaders, both because of its purpose and because of its sponsorship.* We urge organizations to buy blocks of tickets and all individual readers to attend." [Emphasis added.] (Pet. Ex. 169.)

The record shows that respondent's affairs were systematically publicized and supported in a coordinated way by the Party. Respondent's rally at Manhattan Center on March 4, 1943, where Earl Browder was a featured speaker, is illustrative. Horvath as a Party member attended this rally, which was publicized in advance by the

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* See Pet. Exs. 14, 15, 16, 17, 18, 19, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 44, 52, 85, 127, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 169, 172, 180, 181, 182, 187, 189, 192, 193, 194, 199, 234, 235, 236, 237, 239, 240, 241, 245, 246, 247, 248, 249, 250, 251, 253, 257, 258.

[fol. 138] *Daily Worker* of March 3, 1943 (Pet. Ex. 180), and again in the *Daily Worker* of March 4, 1943 (Pet. Ex. 181), which announced that the rally was to be held that evening. A post card (Pet. Ex. 183) was distributed at this rally, which members in the audience were urged to sign and send to President Roosevelt in connection with the demand that "anti-fascists" imprisoned in North Africa be released. The Party character of this project and Party support therefor is shown by the fact that Pet. Ex. 185, an identical post card, was distributed along with a copy of the speech by Party leader Browder made at this rally (Pet. Ex. 184), at a closed meeting of the Party's 11th A.D. Club which Horvath attended after the rally. Following it the *Daily Worker* of March 6, 1943 (Pet. Ex. 182), contained the text of Browder's speech at this rally.

Similarly, Blauvelt identifies Pet. Ex. 127, the *Daily Worker* of July 19, 1945, containing a blocked caption, "Lincoln Vets Back Anti-Franco Petition," and establishes that the petition referred to therein was circulated for signatures at a meeting of the Party's Flatbush Club held on the same date.

The *Daily Worker* of April 2, 1946 (Pet. Ex. 192), afforded favorable publicity to and solicited contributions for a VALB rally to be held on April 13th, which Horvath's Party Club members were directed to attend.

The *Daily Worker* of April 13, 1946 (Pet. Ex. 193), again urged support for the VALB rally mentioned in Pet. Ex. 192, and also, in an article entitled "We Who Fought in Spain Call You to Rally Today," signed by Party leaders Bob Thompson, Steve Nelson, Johnny Gates, Saul Wellman, and Irving Goff, all also VALB members, specifically calls for all Party members to support this rally. Pet. Ex. 194, the *Daily Worker* of April 15, 1946, affording additional publicity, contains a picture of Milton Wolff speaking at this rally and indicates that 5,000 persons attended.

It is established that *Daily Worker* articles by high Party leaders, calling for support of VALB functions, operate as directives from the Party leadership to its members to give such support. For example, Lautner shows that an article in the *Daily Worker* of February 28, 1946 (Pet.

Ex. 18), signed by the Party's New York State Secretariat and entitled "State CP Backs Spain Pickets Sat." constitutes such a call upon the Party membership to support a VALB picket line.

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[fol. 139] Similarly, the *Daily Worker* of September 20, 1946 (Pet. Ex. 34), contains the following directive:

> "Communist veteran leaders yesterday appealed to all Communist and progressive veterans of World War II to participate in the memorial service and parade which will precede the opening of the first post-war convention of the Veterans of the Abraham Lincoln Brigade.
>
> *"The statement issued by Robert Thompson, Communist Party state chairman, John Gates, national Communist veterans' director, and Irving Goff, New York State Communist veterans' director, pointed out the importance of the VALB in the present struggle against fascism.*.
>
> "'Communist veterans recall with pride the great battles fought by the men of the Abraham Lincoln Brigade against fascism in Spain. *We Communists know that the war against fascism has not yet been completed. We cannot but consider it the highest honor to march side by side with these "premature anti-fascists" in their present efforts to help oust Franco and restore Spain to the Spanish people.'"* [Emphasis added.] (Pet. Ex. 34.)

Pet. Ex. 196, distributed to the members of Horvath's Party Club, is a form issued by respondent calling for volunteers for "Tag Days" (a fund-raising operation). It provides spaces for persons to indicate dates and times of their availability, along with blanks for names, addresses, and phone numbers, and states that funds raised will be forwarded by the VALB to the UGT, the Communist-controlled Spanish trade union federation affiliated with the World Federation of Trade Unions. Horvath states it was necessary to fill out these forms so there would be a record of the Party members who participated in this activity.

Pet. Ex. 197 was distributed to the members of Horvath's Party Club in connection with a VALB-sponsored demonstration in Times Square, New York City, on November 14, 1947. This leaflet carries a huge caption "All Out" and

[fol. 140] asks that immediate United Nations action be urged, and that letters and telegrams be sent to the United States UN representative demanding complete economic sanctions against Franco. Pet. Ex. 193, a post card issued by respondent and distributed to Horvath's Party Club, was addressed to the United Nations, and asked immediate imposition of sanctions against Franco. Party members were directed to sign and mail these cards.

The *Daily Worker* of September 30, 1947 (Pet. Ex. 199), contains a quarter-page announcement of a mass meeting for "A Free Spain" under the auspices of the VALB, indicating that admission was one dollar. Horvath establishes that tickets for this meeting were sold at her Party Club and the members were urged to attend.

The Party has continuously utilized its personnel and bookshops in New York City to sell tickets to VALB affairs. (See, e.g., Pet. Exs. 15, 16, 17, 44, 180, 181, and 187.)

A leaflet issued by respondent (Pet. Ex. 130), which asks for all-out mass picketing of the fascist Spanish Consulate in New York City on January 15, was distributed at the New York State Party's Lenin Memorial meeting held the preceding day, which Blauvelt attended.

Further Party support of respondent through favorable publicity is shown by the *Daily People's World,* June 5, 1952 (Pet. Ex. 162), publicizing a 15th birthday meeting of the Los Angeles post. Similarly, the *Daily People's World* of September 25, 1952 (Pet. Ex. 163), publicized a VALB fund-raising campaign for defense of Party leader Steve Nelson and also called attention to the fact that respondent's book *The Heart of Spain* would be on sale at the fund-raising parties.

The *Daily Worker,* March 11, 1953 (Pet. Ex. 172), publicizes respondent's tribute to Stalin, mourning the death "of our great ally against fascism," and commending his leadership role in the anti-fascist united front, emphasizing his aid to Spain and his "never-to-be-forgotten slogan,

'The cause of Spain is the cause of all advanced and progressive mankind.'"*

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[fol. 141] The *Daily Worker* of June 3, 1953 (Pet. Ex. 166), publicizes a protest letter sent by Moe Fishman of the VALB to the National Director of the Damon Runyon Memorial Fund for Cancer Research, Inc., which assertedly was sponsoring the first appearance in the U.S. of a Falangist Dance Group, viewed by respondent as a propaganda effort of Franco.

As stated at the outset herein, the printing union identification symbol "Bug 209" relates to Prompt Press, a Party publishing organization. It is, therefore, pertinent in considering the relationship between respondent and the Party, and particularly Party aid to respondent, to take into account that evidence of record showing that the Party, through Prompt Press, has printed material for respondent. It is established that some of the VALB's membership cards were so printed (see Pet. Ex. 92), as were pamphlets put out by respondent entitled *Fascist Spain—America's Enemy*, by David McKelvy White, published in 1945 (Resp. Ex. 53), and *Franco Spain, Menace to World Peace*, by Milton Wolff, printed in 1947 (Resp. Ex. 45), and the book *The Heart of Spain*, edited by Alvah Bessie, published in 1952 (Resp. Ex. 44).

Respondent in its answer admits receiving advice, aid, or support from the Communist Party, among other organizations, and receiving extensive and favorable publicity in newspapers of "Communist opinion," and its witness Wolff also testifies under cross-examination that the Party supported VALB policies from time to time. He states that respondent mails press releases to all newspapers without discrimination, and that to his knowledge such advertisements as were placed in the *Daily Worker* and other newspapers were paid for.** He testifies that it

* This slogan authored by Stalin also shows how issues are raised to rally support for a given cause in a united front effort discussed earlier herein. It has been repeatedly used by both the Party and respondent.

** Under cross-examination, Wolff cannot be definite as to whether respondent's financial records reflect payments for *Daily Worker*

is a policy of the VALB to obtain maximum press coverage

[fol. 142] at all times, and he states that a *Daily Worker* reporter covered the instant proceeding in New York pursuant to a general invitation to the press to do so. Respondent accordingly submitted a number of exhibits consisting of copies of the *New York Times*, the *New York Post*, *PM* and the *Daily Worker*, reflecting what Wolff considers favorable publicity to respondent. (See Resp. Exs. 23-33.)

Respondent in exceptions and argument asserts that it was prejudicial error to receive as evidence articles from the Party's official organs without then permitting respondent to submit, unrestricted by limitations, articles from various newspapers, such as the *New York Times* and the *Herald Tribune*. Such newspaper articles as were offered by respondent were, when warranted, received as evidence to show matters considered by it in formulating its policies but not to prove the truth of the matters stated therein. *Daily Worker* articles submitted by respondent, because of their official Party character and bearing in this proceeding were, like those submitted by petitioner, received without such limitations. Petitioner, unlike respondent, did not offer articles from non-Communist publications.

As shown earlier herein, *Daily Worker* publicity, including its Party directive aspect, when viewed in the light of other evidence of record, particularly that showing concurrent coordinated Party activity in support of the function of respondent publicized, is probative of the basic issues in this proceeding. This, of course, would not necessarily be true with respect to publicity in non-Communist publications. The respondent's evidence of publicity in newspapers not shown to be owned or operated by an organization otherwise shown to be intimately connected with respondent fails to disprove or in any material way detract from petitioner's evidence showing support of it

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advertisements; his reason for saying that such advertisements were paid for is based on his failure to recollect ever placing an advertisement anywhere which did not require payment. It should be noted that the evidence herein relied upon does not in any material way involve the appearance of what may be paid advertisements in Party publications.

through the media of Party publications as an attribute of an existing relationship between respondent and the Party. This being so, we find no error in evidentiary rulings in this regard and no merit to this exception.

Accordingly, we find that the Party from respondent's inception has provided it with material aid and support and that this further evidences that respondent is controlled by the Party and is an organization which operates primarily in the interest of the Party.

RESPONDENT'S PROMOTION OF PARTY OBJECTIVES AND LACK OF DEVIATION FROM PARTY POLICIES

In order to comprehensively set forth the evidence of record relating primarily to the utilization of respon-

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[fol. 143] dent's resources, funds, and personnel to further and promote the objectives of the Party and the world Communist movement, as provided in section 13(f)(3) of the Act and as alleged in section III, paragraph (3), and subsections of the petition, the evidence concerning the extent to which the positions taken by respondent on matters of policy do not deviate from those of the Party, as provided in section 13(f)(4) of the Act and as alleged in section III, paragraph (4), and subsections of the petition, will now be set forth. Consolidating these considerations (which are also probative of Party domination of the VALB) will avoid repetition and more accurately represent the true state of the record, which shows that respondent is a controlled organization through which the Party disseminates, implements, and gains support for its policies.

As has been earlier established, the world Communist movement and the CPUSA as an integral part thereof, in utilizing the united front tactic, depicted its forces in Spain and certain forces in China as fighting for true democracy with the aid of the leading "democratic nation," the Soviet Union. It has also been shown that anti-fascism as a shibboleth of the world Communist movement's united front tactic has been used to promote and advance the influence and power of the Soviet Union and as a means of providing support for it. The evidence shows that respon-

dent's policies are in many respects but an extension of the foregoing and have as their purpose the same objective. They comprehend world affairs, and are attuned to national and international Communist programs and strategy.

World War II

Prior to the Hitler-Stalin Pact

Commencing in 1935, the strategy of the Communist International was to advance its own interests by use of an anti-fascist united front. The CPUSA, as a section of the Comintern, implemented this strategy. It is clearly established by a number of petitioner's witnesses that in 1938 and early 1939, the Party was completely opposed to Hitler and demanded that the United States go to war against Germany. Earl Browder stated the Party's position in February 1938, to be *militantly* anti-fascist, indicating that the forces fighting in Spain and China would, if supported, defeat "fascism." Again in March 1938, Browder, speaking for the Party, re-emphasizes this militant anti-fascist policy, equating the Civil War in Spain with the war in China:

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> [fol. 144] "... *Fascism must be stopped in those places where it first strikes. The Spanish and Chinese peoples are fighting the battles of all mankind. We must come to their help. We must stop all direct and indirect aid to the fascists. We must end once and for all the farce of 'non-intervention.'* ..." [Emphasis added.] (P. 31, Pet. Ex. 8.)

In November 1938, Browder, in calling for the formation of the "broadest united front" against fascism, also showed that this policy comprehends a world alignment of forces, and held monopoly capitalism responsible for the rise of nazism: "The German people were betrayed into the hands of fascism by the false and traitorous representatives of monopoly capital all over the world." (P. 192, Pet. Ex. 8.) In so doing, Browder emphasized that the Soviet Union is the most dependable of the "anti-fascist" nations:

"And we can absolutely depend upon the collaboration of the greatest power in the world outside the United States—that is, the Soviet Union.

• • •

The Soviet Union has proved beyond all doubt that it remains true to its obligations, to its treaties . . . It has never committed an act of aggression, nor broken a treaty. It unwaveringly supported Ethiopia. It remains the one active friend of China. It alone refused to abandon the Spanish republic . . . . What other nation in the world can claim a similar record?" (P. 193, Pet. Ex. 8.)

It is established that from its inception in 1938 until August of 1939, the policy of the VALB was, like that of the Party, militantly anti-fascist, anti-Hitler, with focus upon Franco as a satellite of the greater so-called fascist dictators.

DURING THE HITLER-STALIN PACT

In August 1939, the Soviet Union and Hitler Germany signed a non-aggression pact, hereinafter called the Hitler-Stalin Pact, and as a direct result thereof a complete reversal in Communist Party policy regarding fascism and World War II occurred.

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[fol. 145] In a "Declaration of the National Committee" (Pet. Ex. 36), the Party in September of 1939 set forth this complete reversal of policy unequivocally, completely submerging its policy for military action against Hitler and claiming instead that the Soviet Union had by making this pact contributed to the peace of the world and strengthened the position of the "working class and all true democratic forces":

". . . The Soviet-German Non-Aggression Pact, whereby the Nazi government renounced its long-standing agreement with Chamberlain under which they promised to destroy the U.S.S.R. in return for British help in rearmament and destruction of other nations, exposed the final debacle of Chamberlain's 'appeasement' policy.

"This victory for peace of the Soviet Union . . . tremendously improved the international position of the U.S.S.R. itself and also strengthened the position of the working class and all true democratic forces everywhere. *It created the conditions for the people of the United States to keep America out of the Imperialist War, . . .*" [Emphasis added.] (P. 901, Pet. Ex. 36.)

The Party's National Committee also instructed that a realignment of forces and re-examination of issues were required as a result of this pact and announced the discontinuance of the anti-fascist front and the alignment of forces into separate so-called "democratic" and "fascist" camps, the "democratic" camp being composed of those opposed to war against Hitler, the Soviet ally:

" . . . *All issues and alignments are being re-examined and re-evaluated in the light of these changes. The previous alignment into democratic and fascist camps loses its former meaning. The democratic camp today consists, first of all, of those who fight against the imperialist war . . .*

• • •

"The United States must keep out of any involvement in this imperialist war, or in the rivalries and antagonisms from which it arose. . . ." [Emphasis added.] (P. 901, Pet. Ex. 36.)

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[fol. 146] The Party leaders, applying the Marxist-Leninist concept of just and unjust wars, characterized the war as an "imperialist" and "unjust" one which the "workers" could not support:

"The war that has broken out in Europe is the Second Imperialist War. . . .

"*This war, therefore, cannot be supported by the workers. It is not a war against fascism, not a war to protect small nations from aggression, not a war with any of the character of a just war, not a war that workers can or should support. It is a war between*

rival imperialisms for world domination. . . ." [Emphasis added.] (P. 899, Pet. Ex. 36.)

The National Committee further equated alliance with the Soviet Union with a true anti-fascist peace front* acknowledging that the Party here and in all countries worked for this objective:

> "We Communists, of America and all countries, wanted and did everything in our power to bring about the formation of a real anti-fascist front, with the participation of the Union of Soviet Socialist Republics, and the United States. Not only we, but all serious advocates of the peace front, knew and declared that without the U.S.S.R. any self-styled peace front would be only a huge fraud, a mask for a new predatory imperialist war. But the Tory coalition in the United States blocked American support, and the British and French statesmen rejected the U.S.S.R. participation just because they wanted, not a peace front, but a new predatory war. . . ." (P. 900, Pet. Ex. 36.)

This declaration set forth the following Party slogans:

> "Keep America Out of the Imperialist War! For America's National and Social Security!
>
> * * *
>
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>
> [fol. 147] "Support the Peace Policy of the Soviet Union—the Land of Socialist Democracy, Progress, Peace and National Liberation!" (Pp. 903-04, Pet. Ex. 36.)

Lautner, a Party functionary before, during, and subsequent to the Hitler-Stalin Pact of 1939, establishes that this reversal in Party position was very logical from the point of view of Party policy which was dedicated to the defense of the Soviet Union. Party members who refused to ac-

* Here again the machinations of the united front tactic are revealed, showing that ultimately the lode star by which such action is guided is the welfare of the Soviet Union.

cept and implement this policy were disciplined and expelled.

The VALB, its members fresh from the battlefields of Spain, reversed its anti-fascist policies in accord with the Party's change of line. Herrick establishes that with the sudden change in the Party's policy from that of "collective security against fascism" to one of "hands-off fascism," respondent likewise changed its line from one "against fascism" to "it is an imperialist war," and advocated neutrality.

Subsequent to the pact, Maken attended a VALB meeting where the pact was explained and respondent and its members were requested as Spanish veterans to carry out their responsibilities to assure the public that the Soviet Union is still the stronghold of social progress.* Maken, too, shows that as a result of the pact, respondent's policy underwent a complete reversal, from being completely anti-Hitler, which was consistent with its anti-fascist position regarding Spain, to embracing what Maken describes as the Party slogan—"The Yanks Are Not Coming."

He states that under VALB policy the war had suddenly become a detestable, contaminating war between profiteers and imperialists, an imperialist war between imperialist powers. Fred Keller, a Party functionary, among other speakers, conveyed this position at a VALB meeting and respondent passed a resolution stating that this was an imperialist war and that it would do its best to prevent involvement of the United States. This resolution, according to Maken, was jammed through by authority of respondent's top leaders, as evidenced by the fact that as the meeting was breaking up, mimeographed leaflets previously prepared stating the position of the VALB in the context of this resolution were handed to the members for immediate distribution to the public; this was done.

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[fol. 148] Shortly after the Hitler-Stalin Pact was signed, Gladnick went to the VALB offices and in the presence of Milton Wolff inquired of George Watt when the next meeting of the VALB would be held, as he wanted to find out

*This and similar evidence throughout this Report shows respondent's function to gain support for Party policies.

where respondent stood on this question. He was given a mimeographed copy of a manifesto to read and was told that anyone who did not subscribe to the manifesto could not attend future VALB meetings.* The manifesto was to the effect that the war was not one for the freedom of Europe but an "imperialist war" and that the VALB would struggle against aid to England and France, the theme being that the "Yanks are not coming." Gladnick dissented vigorously from this manifesto, which he tore up and threw in George Watt's face, asserting that the VALB was coming to the defense of Hitlerism and abandoning its fight against fascism. When Gladnick indicated that no membership meeting had been held to determine this, he was told that it was an executive decision, whereupon he accused Watt of getting this decision from Party headquarters.

This position of the VALB was also set forth in the "MAIN RESOLUTION" unanimously adopted at its initial convention in December 1939, as follows:

> "In America, certain forces, the Hoovers, Morgan, Wall Street clique, are leaving no stone unturned in an effort to send America into this conflict. What do they care if thousands of Americans die as long as they themselves reap huge profits? . . .
>
> "We, Veterans, state this war is an Imperialist War and we are opposed to it, and we are more strongly opposed to the United States taking any part in it, on either side.
>
> . . . .
>
> "Let our slogan be: KEEP AMERICA OUT OF THIS IMPERIALIST WAR!** THE YANKS ARE *NOT* COMING!" (P. 2, Pet. Ex. 59.)

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[fol. 149] The Party, through its publication *New Masses* of January 9, 1940, in turn, gave publicity to respondent's adoption of this policy.

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* Although Gladnick had been given no voice in this matter, he was, under respondent's discipline, bound by it or subject to expulsion.

** This is the same slogan put forth by the Party's National Committee in its September 1939 "Declaration," see *supra*.

Hecht also establishes that prior to the Hitler-Stalin Pact the VALB policy had been struggle against fascism, against Hitler, Mussolini, and Franco in every aspect and in every way, but that during the pact respondent's policy was that the war was a "phony imperialist war"; that respondent opposed Lend-Lease and aid to the Allies, and that this policy was the same as that of the Party.

Respondent, as did the Party, disciplined members who were repulsed by, and refused to accept, this reversal of policy. Joe Hamburger, a VALB member, was so disciplined, and as shown, witness Gladnick, too, was given an ultimatum by respondent in this respect. This also contributed to the disaffection of Herrick and Maken from the VALB.

Respondent furthered this Party position* as shown by the fact that it sponsored a meeting in November of 1939, at which the speaker developed the theme that the Wall Street warmongers and Chamberlain's agents wanted to get America involved in a war, but that "peace-loving progressive" people must do everything in their power to prevent aid being given to England and France.

As the concomitant of this policy, the Party opposed all aid to the Allies including lend-lease as authorized by the War Powers Bill, and at the same time set forth a number of allied or subordinate positions. This is shown by the *Daily Worker* of January 23, 1941 (Pet. Ex. 54), which carries front page headlines, "National Committee of the Communist Party Declares: DEFEAT FDR'S WAR-POWERS BILL. Get Out and Stay Out of the War," and reprints the statement of the Party's National Committee which characterizes the War Powers Bill as a "Dictatorship Bill" and the war as one "between two gangs of thieves" in which "all honest men can but hope and strive for the mutual destruction of both thieving outfits to the mutual benefit of their former victims." This statement shifts the Party emphasis from fascism to imperialism, charging that fascism can only be defeated "by defeating imperialism from which it springs as does a boil from a

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* See also Pet. Ex. 102, *Volunteer for Liberty*, January 1940.

poisoned blood stream." Slogans calling for staying out of the "imperialist war," destruction of "Washington's alliance with British imperialism," friendship with the Soviet Union, full aid to the Chinese people, for a true good neighbor policy toward Latin America, and for defeat of the War Powers Bill are also set forth.

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[fol. 150] Similarly, the VALB adopted identical positions against Lend-Lease, for cooperation with the Soviet Union, for aid to China, for a "true good neighbor policy" toward Latin America and for rupture of friendly relations with Britain. These policies were set forth in a statement of respondent's National Executive Committee (Pet. Ex. 147, the *Volunteer for Liberty,* February 1941) within a matter of weeks following the Party's statement above.

The VALB actively participated in supporting this Party policy as is evidenced by Pet. Ex. 97, the *Volunteer for Liberty* of March 1941, giving an account of respondent's role in protesting against the Lend-Lease Bill, which involved taking a leading role in two protest rallies in Washington, D. C., issuing a 15,000-copy special edition of its organ the *Volunteer for Liberty,* leading a picket line around the White House, and participating in an interview with the Department of State.

This official policy of respondent was again reiterated by Wolff as National Commander, addressing* its National Convention in Chicago in May 1941, during which he emphasized the VALB's role in reaching the American people and gaining support for this program:

> *"Let us see that, wherever at least two or three veterans are gathered together, there the Veterans of the Abraham Lincoln Brigade speaks out as an organization . . . Let us strengthen the efficiency and articulateness of our national and local organizations. Let*

* A copy of Wolff's speech (Pet. Ex. 98) was distributed to every delegate who attended the convention, including witness Horan, who testifies that Wolff was in effect a one-man steering committee, telling respondent's members in this speech what they should decide and how to decide it.

us make of every single member a broadcasting station for the spreading of our program . . . (P. 2.)

• • • •

"Besides our own, there are many organizations through which, as individuals and by affiliation, we can carry our program to the people . . . *We have a special appeal for the honest and clear-sighted youth of America* and we must increase our assistance to the American Youth Congress. . . .*

• • •

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[fol. 151] "Spain, the cause of all progressive humanity,** remains today close to the heart of all progressive humanity and close to the conscience of all mankind . . . . Let us again resolve, with renewed fervor, that the Yanks are not coming, . . ." [Emphasis added] (P. 4, Pet. Ex. 98.)

Respondent also publicized this policy in the *Volunteer for Liberty* of May 1941 (Pet. Ex. 95), and in Pet. Ex. 96, a leaflet distributed prior to its Chicago convention, advertising an "ANTI-WAR RALLY, NO CONVOYS, NO A.E.F." mass meeting on the 30th of May 1941, to fight assistance to European nations then at war with Hitler, at which Wolff was a principal speaker. After this convention, respondent's Chicago post became more active and set up a speakers' bureau, of which Horan was a member, to provide speakers to put forth this "No Aid—Yanks Are Not Coming" program. Also, respondent sponsored and held street corner meetings for this purpose.

AFTER GERMAN ATTACK ON THE SOVIET UNION

German military forces attacked the Soviet Union on June 22, 1941, and as a result there was an immediate re-

* Party utilization of respondent with respect to the youth organization American Youth for Democracy is discussed later herein.

** This is in essence the slogan discussed earlier herein, which was raised by Stalin as a rallying call of the anti-fascist united front.

versal of Communist Party policy; the war no longer was considered an "unjust, imperialist" war which could not be supported, and the fullest involvement of the United States against Hitler and aid to England, France, and the Soviet Union through lend-lease and otherwise became the policy and program of the Party. The anti-fascist united front was revived and employed on the broadest scale and, as shown, continued as before to involve the "historic defense of the Soviet Union." Immediately, the Party undertook to mobilize opinion to involve the United States in the war as is shown by the *Daily Worker* of July 7, 1941 (Pet. Ex. 30), announcing a forthcoming "Smash Hitler" rally at Madison Square Garden, as "the biggest Communist demonstration in the United States since the historic defense of the Soviet Union began two weeks ago."

As established by petitioner's witnesses and illustrated by Pet. Ex. 30, the VALB immediately adopted the Party's position brought before it in a report by John Gates, Party

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[fol. 152] functionary (who was also a speaker at the aforementioned Party "Smash Hitler" rally), and respondent launched a campaign for involvement of the United States in the war, and for aid to the Soviet Union and western allies, characterizing the war as a "just war":

> *"Veterans of the Abraham Lincoln Brigade are starting a wide campaign in aid of the Soviet Union's fight against the Nazi invaders. . . .*
>
> * * *
>
> *"They unanimously adopted a report by John Gates, who served as a lieutenant colonel in Spain, calling for the program outlined above.*
>
> *" 'The invasion of the Soviet Union' said Gates, 'has transformed the character of the war from a reqctionary, imperialist war into a just war, a kind of war that we found in Spain . . .'"** [Emphasis added] (Pet. Ex. 30.)

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* As shown earlier, the Party characterized the war as unjust during the Hitler-Stalin Pact.

After the German attack on Russia, Horan and other VALB members went to Party headquarters at 208 Wells Street, Chicago, to learn exactly what the Party wanted the VALB to do under the new circumstances, and were there given general instructions to resume street corner meetings but with a completely changed policy calling for immediate assistance to Great Britain and the Western Allies. Pursuant to these instructions, the VALB held street corner meetings for the specific purpose of building up public support to put the United States into the war. Over-all, respondent's anti-war, anti-aid policy was reversed by the Party; and it was to start aiding Russia immediately, Horan was designated in this connection to contact the Russian War Relief.

The Party's concept of "just" and "unjust" wars adopted by respondent was discussed at length by Gil Green,* in an article entitled "The Nazi Aggression Against the Soviet Union And the Changed Character of the World War" in

[fol. 153] the *Daily Worker* of July 13, 1941 (Pet. Ex. 38), which clearly shows that aid to, and defense of, the Soviet Union was the prime objective of this common policy:

> ". . . Until June 22 the war was an imperialist war because the ruling classes waging it did so for imperialist objectives, for world power. The war was therefore an UNJUST war on both sides. . . .
>
> "The involvement of the Soviet Union introduces a JUST war of a big power . . . But that is not all. The big power is a Socialist power, a land in which the working class rules, a land without class divisions, class exploitation or national oppression.
>
> "Therefore a mighty democratic, anti-imperialist and Socialist force has become involved in the struggle, *a force whose weight is so decisive as to basically affect all relationships of forces on a world scale, in both a military and political sense. The involvement of the*

* At this time a member of the Party's Central Committee and Chairman of the New York State Party. He was also National Secretary of the Young Communist League and later a member of the Party's National Board. He was formerly a member of the Executive Committee of the Communist International.

Soviet Union has therefore basically altered the dominant character of the war.

* * * *

"Those who want to defeat fascism certainly cannot and must not aid these reactionary circles of finance-capital by rejecting the British fight against Hitler. On the contrary, the military defeat of Hitler and *the victory of the Soviet Union requires that this British fight really be merged with that of the Soviet Union* . . .

". . . Every blow struck against this main enemy is a blow in the interests of the Soviet people, the people of Europe and the peoples of the world. The war against Hitler fascism has therefore become a JUST war on the part of all those who wage it. (P. 1.)

* * * *

". . . The defeat of the Soviet Union would unleash the dogs of reaction throughout the world. . . ." [Emphasis added] (P. 5, Pet. Ex. 38.)

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[fol. 154] One of the primary facets of the Party's policy to involve America in the war, the objective of which as shown was to protect and defend the Soviet Union, was the demand raised through slogans for a declaration of war and the opening of a second front in Europe by the Allies with the United States participating. The Party's National Chairman, William Z. Foster, in addressing a rally in New York on November 2, 1941 (Pet. Ex. 39), stated:

"There are those reactionary elements in our country, of which ex-president Hoover is a prominent spokesman, who shrug their shoulders at the titanic struggle now going on upon the Eastern front and dismiss it as none of our affair, with the glib assertion that 'the Russians and Germans will destroy each other, so the United States has nothing to worry about.'

"This is the most deadly advice that could be offered to the American people. For our people to accept it

would do to us just what Hitler wants done, to paralyze us into inaction until he is all ready to strike. . . . *

* * * *

"The main center of the war against Hitler is the Eastern front, where the Red Army . . . is battling desperately. America and Britain, as a key move in the common anti-Hitler fight, must relieve the pressure upon the Red Army forces . . . More important . . . is the opening of a new front in Western Europe. This would mean the sure ruin of Hitler. Britain and the United States are jointly responsible for the establishment of such a front." (Pet. Ex. 39.)

Respondent also adopted this precise Party policy in all its aspects, as shown by a pamphlet published by it in No-

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[fol. 155] vember 1941, authored by Milton Wolff, entitled *WESTERN FRONT NOW!*** (Pet. Ex. 40), in which the VALB in promulgating this position emphasizes its anti-fascist record, although this is diametrically opposed to its former position of staying out of the war.

An editorial in the *Volunteer for Liberty* of December 1941 (Pet. Ex. 99), which Horan establishes expressed the VALB's official policy in these matters, also shows respondent functioning to gain support for the Party's position:

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* As further revealing the Soviet interest as the touchstone of this policy, compare this statement of the Party concerning "deadly advice" with that of Browder during the Hitler-Stalin Pact wherein he advocated letting the so-called imperialist powers of Britain, Germany, etc., destroy each other, p. 60, *supra*.

** Respondent's efforts for a second front were reviewed by Jack Joze in its national convention in late 1946 (Pet. Ex. 143): "Here in the United States a great movement had developed for the immediate opening of the second front . . . The Vets were an active part of that great movement. Some of you recall the street meetings we held with sound trucks throughout the city . . . our pamphlet 'ATTACK FOR VICTORY,' of which 5,000 copies were sold. Thousands of other pieces of literature were distributed by our organization . . . we did what we could; we never stopped pressing for a second front."

"In this situation, the Veterans of the Abraham Lincoln Brigade can take only one position . . . We call for the opening of a western Front *immediately* by Britain and the United States together. We call upon our government to *declare war now on Nazi Germany!*

• • •

"Our job as Veterans is to see that this is expressed in clear and powerful terms. We call for National Unity of all anti-fascist forces in support of the war effort . . . The lessons of Spain must be remembered and applied. Lindbergh, Hoover, Wheeler, Nye, and the American First Committee—the American Fifth Columnists—must be exposed and treated as traitors to the nation. *Their fascist-minded defeatism and appeasement appeals, their open use of anti-Semitism, their close relations with Nazi agents, make an immediate investigation imperative for the safety of the country. We Veterans demand that these Fifth Columnists be scotched now before they can do any more damage.*

• • •

"The Veterans of the Abraham Lincoln Brigade pledge all their efforts to this single aim." [Emphasis added] (Pp. 2-3, Pet. Ex. 99.)

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[fol. 156] Evidencing direct contact between respondent and the Soviet Union and the recognition that its activity was in furtherance of the Soviet anti-fascist united front, the *Daily Worker* of January 17, 1942 (Pet. Ex. 32), quotes a cable to the VALB received from the "Anti-Fascist Soviet Youth Committee" thanking respondent for presents sent to Red Army soldiers and hailing its activity in aid of fighters "in the anti-fascist front."

A fund-raising and propaganda effort of the VALB's Chicago post called a Fiesta Victoria was held November 15, 1941, to advance the pressure for a second front and for United States entry into the war. Horan was chairman of the committee which organized this affair. A souvenir program of this undertaking (Pet. Ex. 101) shows the propagandic use by the VALB of its background in Spain to rally support for the Party's immediate program:

"The Veterans of the Abraham Lincoln Brigade call upon the President and the Congress of the United States for a bold and immediate declaration of war against Hitler Germany.

• • •

"We, the Veterans of the Abraham Lincoln Brigade, are proud of the fact that, four years ago, in the name of millions of Americans, we marched against Hitler and Hitlerism . . . America must throw its great weight into the battle, by a bold and immediate declaration of war. The Veterans of the Abraham Lincoln Brigade ask only to be the first to march against the brutal enemy of all humanity and all civilization." (Pp. 3-4, Pet. Ex. 101.)

Respondent's National Commander Wolff testifies that in 1939 the VALB considered Germany, Italy, and Spain to be fascist countries and states that since its inception the VALB's opposition to fascism has never changed. Concerning the Hitler-Stalin Pact period and respondent's policy with respect to the war during that time, Wolff states that the VALB continued to be opposed to Nazi Germany and refers to a statement in its 1939 convention resolution (Pet. Ex. 59) to the effect that no aid should be given to Chamberlain, Daladier, or Hitler. Under cross-examination he agrees that respondent during this period characterized the war as an imperialist war and utilized the slogan "The Yanks Are Not Coming" but disclaims originating that slogan. He also testifies that while this was respondent's slogan during the Hitler-Stalin Pact period, upon a change in the character of the war, most dramatically demon-

[fol. 157] strated, according to Wolff, by Hitler's attack on Russia, the VALB's position changed to one calling for involvement in the war and a second front.

Respondent's evidence neither substantially contradicts nor refutes the extensive oral and documentary evidence of petitioner herein set out, which overwhelmingly preponderates. Accordingly, it is concluded that respondent has not deviated from Party policies, but has in fact adopted these policies and their reversals, and embraced the many

aspects thereof, concerning World War II prior, during, and subsequent to the Hitler-Stalin Pact, and that respondent actively supported and promoted these policies and thereby knowingly rendered substantial aid to the Party and the world Communist movement.

RELEASE OF PARTY LEADER BROWDER

It is also established that the VALB followed and undertook to implement the Party's policy concerning the release of Earl Browder, who, having been duly convicted, was serving a term in a Federal prison.

William Z. Foster, National Chairman of the Party, in the March 1941 *The Communist* (Pet. Ex. 41), linked the conviction and imprisonment of Browder with the Party's policy of nonintervention in World War II (this was the period of the Hitler-Stalin Pact), showing here too that the Party's policies admittedly are attuned to Soviet interests:

> *"Earl Browder in jail is a reaffirmation of the principle of proletarian internationalism, of solidarity with the peoples of the world in their enduring struggle against war and imperialism. . . . "* [Emphasis added] (P. 196, Pet. Ex. 41.)

The Party's National Committee on March 25, 1941, issued a statement entitled "Demand the Freedom of Earl Browder in Defense of Your Rights, Living Standards and Peace!" signed by Foster as Chairman and Robert Minor as Acting Secretary (also a VALB honorary member), which proclaimed: "Demand that America get out and stay out of the war! . . . Help build the Communist Party, the Party of socialism, the leader of the fight for peace, security and freedom!" (P. 294, Pet. Ex. 42.)

That respondent's policy followed that of the Party in its precise aspects is shown by the *Volunteer for Liberty* for March 1941 (Pet. Ex. 97), which provides:

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> [fol. 158] "We are proud of the fact that Earl Browder wears the tri-cornered pin of the Veterans of the Abraham Lincoln Brigade. If any man in America is entitled to that honor, he is. . . .

> ". . . We say for all to hear that the frame-up of this leader of the anti-war struggle will not deter but increase our efforts to GET AMERICA OUT OF THIS WAR AND KEEP IT OUT." (P. 2, Pet. Ex. 97.)

Respondent's activity in implementing this Party policy to obtain the release of Browder through arousing public support for this project is illustrated by the *Daily Worker* of February 13, 1942 (Pet. Ex. 33), reporting Wolff's speech at a Lincoln's birthday celebration by the VALB, wherein Browder is referred to as "a consistent anti-fascist" who should be promptly freed to speed victory against the common enemy.

Further, the *Daily Worker* of February 28, 1942 (Pet. Ex. 31), accorded publicity to respondent's activities in the "campaign to liberate Earl Browder," linking his imprisonment with a passport technicality following his visit to the fighting front in Spain, whereas the Party in Pet. Ex. 41 (*The Communist*, March 1941) charged it grew out of the activities in support of the Chinese people. This, too, evidences respondent's function of gaining support for Party objectives.

Release of Imprisoned International Brigadiers

Many International Brigadiers had been imprisoned by Franco, and others upon leaving Spain, were imprisoned by French authorities. As a continuing aspect of the operation of sending these men to Spain, the world Communist movement, including the CPUSA, continuously agitated for the release and rehabilitation of these "anti-fascist fighters."

The Comintern's official organ, *World News and Views*, of February 1939 (Pet. Ex. 7), called for "energetic protests" against the imprisonment and treatment of these men.

In December 1939, at its initial convention, respondent also adopted a policy of protest brought before it by a report of Garcia Val as a representative of Spanish Veterans in Mexico. As shown in this Report, the interest of the Soviet Union lay behind respondent's policy concerning International Brigadiers imprisoned in France and Spain, as they, too, are regarded as "cadres of the working class":

[fol. 159] "Why is their treatment of these fighters for democracy so brutal? *Because international reaction knows that there is the flower of the working class of these countries, many of their best cadres, the most powerful leaders of the people in the struggle against the imperialist war, and especially of a war against the Soviet Union. International reaction wants to destroy these cadres of the working class, for they fear them. And for this reason, it is of such vital interest to us to rescue them, to free them, to save them for the fight against the imperialist war, against reaction.* (P. 28)

• • •

"*. . . The struggle to save them is an important front of the struggle against imperialist war and reaction.*" [Emphasis added] (P. 29, Pet. Ex. 59.)

Respondent at this convention implemented Val's appeal "to work with the same energy that we fought with in Spain" to save these men by unanimously passing two resolutions; one, directed to President Roosevelt, urging that the United States extend assistance to these men, and the other, to the French Ambassador, protesting the treatment of these men in France.

It is clearly established from respondent's official convention proceedings in 1939 (Pet. Ex. 59) and reports made at its 1946 convention (Pet. Ex. 143); reviewing its policy and activities on behalf of International Brigadiers, that this activity was considered but an aspect of a continuing fight against "international reaction" (Pet. Ex. 143), a part of the struggle against "imperialist war" and especially a war against the Soviet Union. The CPUSA actively supported respondent in this activity as is illustrated by the *Daily Worker* of February 6, 1940 (Pet. Ex. 27), which publicizes a VALB "Tag Days" fund-raising appeal.

Further evidencing the purpose and international scope of this VALB policy, it is established that the world Communist movement through Andre Marty issued directions to the VALB to intensify this campaign after the attack on the Soviet Union. In this connection, the evidence shows

that in 1941 and 1942 Felix Kuzman, Party functionary, VALB member, and then Secretary of the United Spanish Aid Committee, often sent down directions to the Chicago post concerning their work of raising funds to send International Brigade veterans to other countries. In the fall of 1941, at VALB offices in Chicago, Kuzman showed Horan a letter written by Commander Brunni of the Russian Red Army, Secretary to Andre Marty (Comintern

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[fol. 160] Executive Committee member), and was told to read and memorize it and not to discuss it with anyone except reliable people. This letter contained a reference to the attack on the Soviet fatherland by Germany and directed the VALB to raise money to obtain the release of 3,000 International Brigade veterans in prisons and concentration camps in Europe so they could be used in the "anti-fascist fight."* All members of respondent's Chicago post who were considered reliable were shown this letter.

GOVERNMENT OF FINLAND

Respondent adhered to the policies of the Comintern and the Party in supporting the so-called People's government of Finland in 1940, to which it sent a message from its initial convention (see Pet. Ex. 59, p. 4).

As Editor of the *Daily Worker*, Budenz was required to know the status of the People's government of Finland which he states was an abortive government set up in Finland by the Soviet Union at the time of its attack on Finland under Otto Kuusinen, member of the Executive Committee of the Communist International.

It is established that the policy of the VALB, like that of the Party, toward the legitimate (Mannerheim) government of Finland was one of hostility, as stated in its main resolution adopted at the 1939 convention:

> "The very same people who refused Spain assistance in her hour of need, now come forth and prate about democracy and the right of small nations, and attack

* Further activity by respondent in aid of International Brigadiers is discussed later herein.

> the Soviet Union because she is once and for all wiping out an Imperialist base for aggression against her—the Mannerheim government, . . . " (Pet. Ex. 59, p. 1.)

Wolff testifies on direct examination that the VALB's position of opposing American support to Finland in its war against Russia was taken upon the basis of the role Finland played in Spain which, he states, was that of a fifth column for Hitler, and further because the government of Finland and its leader Mannerheim were closely identified with the philosophy of Hitler and Mussolini. He states under cross-examination that respondent neither supported nor opposed either government of Finland or the Soviet Union, but simply opposed United States aid to

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[fol. 161] Finland. This testimony is clearly contradicted by the above quotation and other documents issued by respondent* and is contrary to the weight of the evidence.

HEMINGWAY'S FOR WHOM THE BELL TOLLS

As another instance of respondent's adherence to Party policies, it is established that in early 1939, the Party attacked Ernest Hemingway's newly published book *For Whom the Bell Tolls* because of what it considered an adverse characterization therein of Andre Marty, and thereafter the VALB adopted a resolution condemning the book for this same reason. This was done in spite of the fact that Hemingway had a record of supporting and aiding the Loyalist cause in Spain. The resolution was adopted unanimously, but after the meeting a number of veterans who had refrained out of fear from expressing opposition made personal visits to Hemingway, then living in New York City, to express their personal apologies and to disassociate themselves from the resolution. Maken states that this was a concerted attack by the Party and related organizations designed to destroy Hemingway's prestige, and narrow the audience which would read this work.

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* See particularly Pet. Ex. 59 (which shows further support of the Soviet Union); Wolff's testimony is also contradicted by Resp. Ex. 47, wherein Wolff, at page 9, refers to "Mannerheim the Butcher" in discussing the government of Finland, and supporting the Soviet Union.

Further in this connection, respondent's Commander Wolff testifies under cross-examination that Hemingway's works were excluded from an anthology published by respondent in 1952, called *The Heart of Spain* (Resp. Ex. 44), because of his treatment of Andre Marty in *For Whom the Bell Tolls,* and because French veterans of the Spanish War communicated to respondent that they would resent the inclusion of Hemingway's works. Wolff admits that notwithstanding this condemnation of Hemingway, respondent has continued to solicit his support for various positions taken by it.

SPAIN AND LATIN AMERICA

As shown heretofore, the Party's formation, support, and maintenance of the ALB in Spain was pursuant to Comintern direction and in support of objectives of the Soviet Union as leader of the world Communist movement. As has also been established, one of the purposes of the formation of respondent by the Communist Party was to continue the struggle for a Communist Spain with its consequent benefit to world communism. The policies of the VALB concerning Spain are its main emphasis and, as

[fol. 162] the evidence now set forth will show, have consistently been a continuation of these basic policies of the Party undertaken in furtherance of international Communist objectives. Respondent from its inception to the present has adopted policies which coincided with those of the Party in all their varied aspects concerning Spain, including Latin America as part of its sphere of influence, and in so doing acted as a catalyzer to broadcast such policies seeking to gain support for them, and thus for the Party and the world Communist movement.

In order to rally support for Spain at the outset, the Party emphasized, when it served its purpose, that fascist power in Spain would threaten America's security because of the influence of Spain in Latin America. Browder in a speech on November 16, 1938, sets forth this proposition:*

* This has also been repeated numerous times by respondent as part of its anti-Franco program, as later herein shown.

"If we want to preserve Latin America from Hitler, whose plans place that continent next on the list of aggressions, then we must awake to the fact that Spain is the first line of defense of Latin America. . . . " (P. 194, Pet. Ex. 8.)

At respondent's initial convention in December 1939, David White, also a Party functionary, delivered the main report of respondent's National Executive Committee, which reflected the Party's conception of Spain's influence over Latin America, stressing that VALB members must operate to gain support for this policy by utilizing their standing and influence as *veterans*:

"They [ALB members] saw that victory for the Spanish Republic and the Spanish people would greatly strengthen the cause of peace, for it would turn the tide of international lawlessness and fascist aggression. *They saw that it would greatly strengthen democracy, not only in Latin America, where nations and peoples look to Spain as their mother country, but throughout the whole world, . . .* "* (P. 2)

* * *

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[fol. 163] "The National Executive Committee wishes to emphasize, however, that all activity, whether individual or organizational, must be *veteran* activity. *As veterans we have had special experiences, as veterans we speak with special authority. . . .* " [Emphasis added] (P. 6, Pet. Ex. 59.)

Respondent followed the Party's position concerning United States policy toward Latin America, and most precisely with respect to the Vargas government in Brazil, which both organizations opposed as "reactionary" and a "base for fascism."

In an editorial entitled "Policy Toward Spain," *Daily Worker*, December 28, 1944 (Pet. Ex. 43), the Party sets

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* This again evidences that from the Communist world viewpoint, Spain's significance, in part at least, embodies its relationship to Latin America.

forth its position again, tying in Latin America and asking support for a "break off relations with Franco" rally:

> "It does not have to be argued any longer that Franco was and remains the puppet of German fascism . . .
>
> "For the United States the issue ought to be clear. *We cannot expect a new and stable European democracy if fascism retains a strategic foothold in the southwestern corner of Europe. And all of our problems in Latin America will become even more difficult of solution unless we seized* [*sic*] *at least one of the keys to hemisphere solidarity: A Republican, democratic Spain . . .*

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* In weighing the evidence of the Party's and respondent's policies relating to World War II discussed earlier and those pertaining to "democratic" Europe and China in the post-war period, we have also taken into account Stalin's analysis of the war and its effect from the Soviet global viewpoint of dividing the world into two antagonistic camps, as published in *The Worker*, November 9, 1952 (Pet. Ex. 233):

> "The disintegration of the single, all-embracing world market must be regarded as the most important economic sequel of the Second World War and of its economic consequences. It has had the effect of further deepening the general crisis of the world capitalist system.
>
> "The Second World War was itself a product of this crisis. Each of the two capitalist coalitions which locked horns in the war calculated on defeating its adversary and gaining world supremacy. It was in this that they sought a way out of the crisis. The United States of America hoped to put its most dangerous competitors, Germany and Japan, out of action, seize foreign markets and the world's raw material resources, and establish its world supremacy.
>
> "But the war did not justify these hopes. It is true that Germany and Japan were put out of action as competitors of the three major capitalist countries: the U.S.A., Great Britain and France. But at the same time China and other, European, people's democracies broke away from the capitalist system and, together with the Soviet Union, formed a united and powerful socialist camp confronting the camp of capitalism. The economic consequence of the existence of two opposite camps was that the single all-embracing world market disintegrated, so that now we have two parallel world markets, also confronting one another.

* * *

"This is what Americans are expressing in the movement to break off relations with Franco. The meeting at Madison Square Garden next Tuesday will dramatize this demand and it deserves the widest kind of support. . . . " [Emphasis added] (Pet. Ex. 43.)

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[fol. 164] That respondent adhered to this policy and operated to gain support for it is established and is illustrated by a quarter-page announcement in *The Worker* three days later, December 31, 1944 (Pet. Ex. 44), urging attendance at the Madison Square Garden anti-Franco rally and providing that tickets were available at respondent's office and a Party bookshop.

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[fol. 165] The emphasis on fascist Spain's connection with Latin America, and hence its threat to the United States, is also stressed in a statement issued by respondent which, according to its Exhibit 51-A, was widely publicized throughout the country. Therein fascism in Argentina is stated to be inspired by Spain, which is acting as a gateway for fleeing Nazis. And Madrid under Franco is stated to be "the fountainhead of anti-democratic and anti-United States propaganda flowing into Latin America." (Resp. Ex. 51-A.)

As stated, the Party in creating respondent had a policy to foster communism in Spain, and in a *Daily Worker* editorial of December 28, 1944 (Pet. Ex. 43), called for support of a junta movement in Spain.

Petitioner's Exhibit 140, entitled "The New Situation in Spain and the Tasks of the Veterans of the Abraham Lincoln Brigade," was distributed at a VALB meeting, chaired by Felix Kuzman in late 1944, with witness Harris present. Therein respondent, like the Party, states that

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"But it follows from this that the sphere of exploitation of the world's resources by the major capitalist countries (U.S.A., Britain, France) will not expand, but contract; that their opportunities for sale in the world market will deteriorate, and that their industries will be operating more and more below capacity. That, in fact, is what is meant by the deepening of the general crisis of the world capitalist system in connection with the disintegration of the world market." (Pp. 5-6, Pet. Ex. 233.)

a change had occurred in Spain by virtue of a developing junta* and describes it in terms of a "national liberation" movement just as the Party did:**

> ". . . It is at once apparent from this that the present movement differs in certain important aspects from the movement which led the Republic in the fight against Franco's successful Nazi-controlled rebellion. *That movement in the main, was a People's Front movement in defense of an established Republic. The present movement is a National Front movement for national liberation which can take on a character far broader and deeper than its predecessor.*" [Emphasis added] (Pet. Ex. 140, P. 2.)

Respondent further emphasizes that "A Junta Spain would be a cooperative part of the New Europe" *** whereas a Franco Spain would be a constant source of friction as demonstrated by the "Soviet Union's withdrawal from

[fol. 166] International Aviation Conference because of Franco representation there." (P. 3, Pet. Ex. 140.)

The method by which respondent is to gain support for this movement is the same as that used by the Party:

> "4. *LATIN AMERICA* (Spanish Ties)
>
> *"This is the key. Exposed Franco intrigue, anti-American, in Latin America, shows the most direct menace to our country. This not only is a threat from Franco, but from Hitler.'*
>
> • • •
>
> *"It is to America's interest to withdraw support from Franco and extend support to the anti-Franco forces.*

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* Respondent in Pet. Ex. 195, the *Volunteer for Liberty*, September 1947, opposes the formation of a junta excluding Communists which would supplant Franco.

** A movement for "national liberation" is to be supported under the Communist concept of "just" and "unjust" wars, see Pet. Ex. 36, p. 903.

*** Concerning the "New Europe" after World War II, see Stalin's statement p. 75, *supra*, re the alignment of European people's democracies in the Soviet Camp.

Public opinion in our country must be rallied to this end. [Emphasis added] (P. 3, Pet. Ex. 140.)

Under the title *"ROLE OF THE V.A.L.B."* this exhibit sets forth with clarity the functional purpose of the VALB in the united front as an "activizing force helping to set other groups into motion" while cooperating with the "mass movement," but always declaring its identity as a separate organization. It further relates that respondent's members "must attach the same importance to the Spanish situation" as earlier, as they have "a unique position and unique responsibility." Noting that Spain was entering a final and decisive period in the struggle for "National liberation" requiring that the Junta be supported, respondent's role is stated thus: "to help rally American public opinion for that support." (Pp. 4-5, Pet. Ex. 140.)

A working committee was set up to implement respondent's policy in this regard, which consisted of Bob Thompson, Leonard Lamb, Dave White, Leonard Levinson, Nils Berg, Albert Prago, Felix Kuzman, William Aalto, and Harold Smith. All except Berg are shown to have been Party members or functionaries, thus further evidencing that this was a Party policy being implemented and controlled by Party representatives through respondent.

Respondent's above-described function is also shown by the *Volunteer for Liberty*, January 1945, which shows that its activity in the United States in this instance involving an intensification of its campaign to break relations with

[fol. 167] Franco, is coordinated with events in Spain and activated through "democratic progressive elements" with which it has "always had a certain authority and influence." (P. 2, Pet. Ex. 142.)*

Jack Bjoze, then respondent's Executive Secretary, in reporting to its Fifth National Convention in late 1946, shows the extensive functioning of the VALB in promulgating this policy in coordination with events in Spain:

* For further evidence of Party and VALB positions re Spain, see Pet. Exs. 234 and 235, *Daily Workers* of April 13 and 19, 1945, respectively.

"About September 1944 dramatic and long awaited news came from Spain. Fighting had broken out against Franco . . . To us that meant that we too had to organize ourselves to bring before American public opinion the necessity of the prompt obliteration of fascism in Spain. Our first major effort was to throw ourselves into the job of making the anti-Franco Madison Square Garden rally organized by the National Committee a success. That the Garden was full in January 1945 was due in a large part to our efforts. At that time also we began the publication of News On Spain.* We also set up a Speaker's Bureau. From that day to this our speakers have addressed many hundreds of meetings ranging from large specially organized affairs to club and group gatherings. . . . " [Emphasis added] (P. 5, Pet. Ex. 143.)

Further coordinate functioning of the Party through respondent is shown by Harris, who attended Party meetings where it was decided that the VALB was to be utilized in Party campaigns such as writing the President and the United Nations concerning breaking relations with Franco Spain, and he attended a meeting of respondent where this activity was undertaken. He was told by Felix Kuzman, in the VALB office in late 1945, that the Party was going to supply arms to restart the fight against Franco, which would become necessary if diplomatic relations were not broken off.

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[fol. 168] In early 1946, Harris attended a Party Waterfront Section meeting with Harry Mann, VALB Trade Union Director, where Mann spoke on behalf of the VALB concerning strike activity in Spain, stating that it was necessary for trade unions to increase their activity against Franco, noting that the time was arriving rapidly when

* A copy of *News On Spain* in evidence, issued June 1945, comprises Pet. Ex. 105. It states: "We stand by the pledge we made to Dr. Negrin when we left Spain and in accordance with that pledge will support him in every effort he may make to speed the overthrow of the Axis-installed dictatorship of General Franco and the Spanish Fascist (Falange) Party."

the Party would assist the Spanish people in getting rid of Franco. Harris establishes that this VALB policy was the same as the Party's policy at that time.

Further, respondent's functioning in close coordination with the Party in the promulgation of common policies is shown by the campaign to free and save from asserted impending execution by Franco two "anti-fascist" military leaders (Pet. Ex. 188), Santiago Alvarez and Sebastian Zapirin. At the CPUSA's 26th Anniversary celebration held in Madison Square Garden on September 18, 1945, chaired by Bob Thompson (Party National Secretariat and VALB member), Saul Wellman, a leader in the Party's National Personnel Commission and a VALB member, read a cablegram sent to respondent by General Modesto and General Lister* from France urging assistance for Alvarez and Zapirin. He asked that all present send letters immediately to the White House and State Department, stating in this way a minimum of 18,000 letters would be received by the following day. A leaflet was distributed (Pet. Ex. 186) announcing a VALB rally to save these men, to be held on September 24, 1945, and Wellman urged those present to attend.

At a meeting of the Party Flatbush Club on September 20, 1945, Abe Feingold, vice-president of the club, introduced Moishe Brier, a Party functionary and a VALB member, who directed Cris Abrams to send telegrams to President Truman and Secretary of State Byrnes asking them to intervene on behalf of Alvarez and Zapirin. Brier also urged the members to attend the September 24th VALB rally, and pursuant to his direction a $43 collection was taken up to be contributed at the rally on behalf of the Flatbush Club.

The *Daily Worker* of September 22, 1945 (Pet. Ex. 187), also publicizes and directs Party support for this rally, indicating that the VALB is being utilized to help initiate and develop a mass movement to compel the Government to act. This exhibit also contains a full-page advertisement devoted to this rally, which indicates that tickets for it are

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* Lister and Modesto were Spanish Communists.

on sale at the Party's book shop and at VALB headquarters.

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[fol. 169] The *Daily Worker* of September 23, 1945 (Pet. Ex. 188), publicizes the support of this cause by "Dolores Ibarruri, Republican Spain's great woman leader who is called La Pasionaria," stating she sent "fervent good wishes" to this rally. Further, high Party functionary John Williamson in this same issue of the *Daily Worker* urges attendance at this rally and shows that this activity, too, comprehends the significance of Spain to Latin America and the "new democracies of Europe" from the Party's viewpoint:

> "We must rescue from the bloody executioners of Franco such early anti-fascist military leaders as Alvarez and Zapirin—*we must clear the road for a democratic Spain instead of the present center of international fascism with its special activities in Latin America and a breeding place of intrigue against the new democracies* of Europe and of our own country.*" [Emphasis added.] (P. 2, Pet. Ex. 188.)

A collection was taken up at this VALB rally and it was announced that $500 had been pledged by the Party's New York State Committee.

The *Daily Worker,* September 25, 1945 (Pet. Ex. 189), reports this rally (held the preceding day) and calls attention to the prominence of the Soviet Union representatives present. It evidences also that the policies of the Party, respondent, and the Soviet Union were uniform regarding Spain.

As another aspect of Party policy concerning Spain, Pet. Exs. 193 and 194, the *Daily Worker* for April 13 and April 15, 1946, respectively, show that the Party widely publicized a report by Soviet news commentator Yermashov, and similar charges by Poland in the UN Security Council that "Franco and refugee Nazi scientists were conniving in atomic research" in Spain. Respondent also used this issue in its campaign to rally public opinion against Franco.

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* Cf. here re "new democracies of Europe" after World War II, Stalin's statement, p. 75, *supra.*

The Party also took a position calling for United Nations action against Franco, as shown by the *Daily Worker*, April 13, 1946 (Pet. Ex. 193), wherein it urges attendance at a Madison Square Park rally for this purpose. Also seeking support for this rally is an article on page 3 entitled "'We Who Fought in Spain Call You to Rally Today,'" signed by Bob Thompson, Steve Nelson, Johnny Gates, Saul Wellman, and Irving Goff, all established to be VALB and Party members. This policy was also pub-

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[fol. 170] licized by the Party in the name of respondent on the West Coast in the *Daily People's World* of April 22, 1946 (Pet. Ex. 155), quoting Party member Harold Smith, as commander of a local VALB post, and stressing that the United States' UN representative had conveniently overlooked the VALB's plea to sever relations with Franco. Respondent also marched in the 1946 May Day parade in New York City carrying placards proclaiming this policy, and at its Fifth National Convention in late 1946, passed a resolution calling for increased effort to force the United States delegation in the UN to call for a diplomatic and economic break with Franco.

Pet. Ex. 195,* the *Volunteer for Liberty*, September 1947, also shows that respondent supported the Soviet Union and Party position concerning the UN resolution against Franco and charged that the United States and Britain are Franco's main support. This exhibit announces the organization of a new VALB campaign for severing relations with Franco centered around a visit to the United States of Mrs. Leah Manning, Labor Member of Parliament.

The record shows that Mrs. Manning arrived in the United States in August 1947, as a guest of respondent, and addressed a series of mass meetings in major cities throughout the United States, to focus national attention on the

*The VALB in this exhibit voices its opposition to the dissolution of the Spanish Republican government in exile and the formation of a junta excluding the Communists, whose mission would be to carry out UN resolutions for the peaceful replacement of the Franco regime, thus showing that respondent's policy on Spain insists upon the inclusion of Communists in any Spanish government which succeeds Franco.

necessity for United Nations action to sever relations with Franco Spain and to remove him from power. The Party gave extensive publicity to the VALB-sponsored Leah Manning speeches, as is shown by Pet. Exs. 245, 246, 247, 248, 249, 250, 251, 252, 253, issues of the *Daily Worker* dated August, September, and October 1947.

United States foreign policy concerning Spain in recent years has been characterized by the Party and by respondent as a pro-Franco policy which is laid to "American imperialists" who want Franco "as an ally in their drive for world domination." (Pet. Ex. 221)

Another facet of this policy was the Party's opposition to the visit of the Mayor of Madrid to the United States, covered by the *Daily Worker* of March 4, 1952 (Pet. Ex. 232). *The Volunteer for Liberty* March 14, 1952 (Pet. Ex. 218),

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[fol. 171] received by Hecht from respondent through the mails, provides under the heading "MEMO FROM THE EXECUTIVE SECRETARY" that it "is a 'what-to-do' flash on three sectors of the anti-Franco front" and provides as the first item, " 'Keep the Mayor of Madrid Out of The United States'." Similarly, the *Volunteer for Liberty*, April 7, 1952 (Pet. Ex. 219), received by Hecht through the mails, carries the caption "FASCIST INVASION!" and announces an "action meeting" in opposition to the Mayor's visit.

As will be shown by evidence later herein set out, respondent's and the Party's policies concerning Spain have continued to coincide up until the present time, notably in that both attempt to link Smith Act prosecutions with present Government policy toward Spain (see "Internal Security Legislation," *infra*).

Concerning respondent's policy on Spain, Wolff testifies that it used the findings and conclusions of a subcommittee of the UN Security Council concerning the Franco regime (as contained in Resp. Ex. 34) and the white paper issued by the State Department on Franco's role in World War II as program and campaign material, principally from 1946 to 1950, and has continued to use this material when appropriate. When questioned concerning whether or not the UN subcommittee report or the State Department white paper motivated VALB policy, Wolff states that it rejuvenated the anti-Franco campaign which respondent had

been carrying on since its inception, which he states is based on the experiences of its members in Spain.

He also testifies that since 1950 respondent's principal activity has been a continuation of this anti-Franco policy involving such matters as: celebrating the anniversary of the outbreak of the Spanish Civil War; participating in picket lines before the Spanish Consulate; distributing leaflets; picketing the Spanish Tourist Bureau urging Americans not to spend their vacations in Spain; picketing a dance group sent to the United States assertedly by the Women's Falange (Fascist Party of Spain); and publishing the *Volunteer for Liberty* and *The Heart of Spain,* and utilizing these publications as background material for various anti-Franco meetings.

Respondent's evidence does not refute that of petitioner which establishes an inter-connection between the policies of respondent and those of the Party concerning Spain, and shows the functioning within the VALB of Party members and functionaries implementing these policies via respondent.

To the extent respondent's evidence is to the contrary, it is outweighed on the record.

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[fol. 172] CHINA

The world Communist movement equated the Spanish Civil War with the situation in China where Soviet-supported Communist forces were also fighting for "democracy." See, e.g., Pet. Ex. 5, p. 414; Pet. Ex. 6, pp. 3-4; Pet. Ex. 12, p. 235.

Charles Krumbein, New York State Party Secretary, in reporting for the State Committee at its 10th Convention in May 1938, shows China to be but another front for international Communist expansion, proclaiming "Our Party there played a tremendous role in bringing about the unity of the Chinese people." (P. 21, Pet. Ex. 12.)

In September 1939, the Party's National Committee issued a declaration (Pet. Ex. 36), signed by W. Z. Foster as National Chairman and Earl Browder as General Secretary, proclaiming "The great Chinese people are fighting

a war of national liberation, a just war" and urging "Maximum Support to China and to all Oppressed Peoples in Their Struggle Against Imperialism and Fascism, for Freedom and National Independence!" (Pp. 903-04, Pet. Ex. 36.)

Similarly, respondent at its initial convention in December 1939 defined the war in China as one for "national liberation" in the main resolution passed by that convention, wherein it also charged that "national liberation" would mean that the United States, one of the "largest imperialist powers" in China "would have to get out," and therefore the capitalist, imperialist powers were withholding aid to the forces of national liberation. This resolution goes on to state:

> "But it is significant to note that the only country *that came to the assistance of Spain is also giving assistance to the Chinese people, and that country is the one that Chamberlain, Daladier, and the Hoovers hate—the Soviet Union.* They condemn this great land and slander her . . . " [Emphasis added] (Pet. Ex. 59.)

National Commander Wolff in addressing respondent's national convention in May 1941, again set forth its policy on China which was precisely that of the Party, calling for "full aid and support to the Chinese people in their battle for national independence." (P. 2, Pet. Ex. 98.)

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[fol. 173] At a closed meeting of Party organizers in 1945, at the home of Charlotte Honig, 320 West 83rd Street, New York City, Comrade Tung, Chinese Communist representative to the San Francisco United Nations Conference, Chin Chang, leader of the Young Communists of China, and Tung's interpreter were present, as was "Frenchy" Robinson, then respondent's Executive Secretary, as a representative of the VALB. Robinson told Comrade Tung that the Chinese Communists could expect total support from the VALB.

In August 1946, the Party set forth its China policy in all its varied aspects in a pamphlet issued by its Education Department entitled *World War III Breeds in China*

(Pet. Ex. 48), quoting its official resolutions, reports, and policy statements, which clearly shows that protection of the interests of the Soviet Union was the basic objective of this policy which involved: aid to the Chinese Communists; opposition to and withdrawal of support by the United States to "the military-fascist dictatorship" of Chiang Kai-Shek; the linking of China with Spain in the world Communist movement's anti-fascist struggle; charging the United States with imperialistic intervention and designs for exploitation of China by monopoly capital; and demanding removal of all American troops from China.

Respondent adopted and supported this precise Party policy in all its ramifications, and actively publicized it and operated to gain support for it. In November 1946, Milton Wolff as respondent's National Commander, in reporting to its Fifth National Convention (Pet. Ex. 144), adopted precisely the Party's policy set forth above concerning China:

> ". . . As we see it, Truman and Byrnes, representing the cartels and monopolies of America, have been moving step by step towards allying the U. S. with the most reactionary war forces and divorcing themselves from our former allies—the people who fought fascism with all they had—the people of China, of all the occupied countries—the people of the Soviet Union . . .
>
> • • •
>
> ". . . In China we maintain the Franco-like regime of Chiang Kai-Shek, a dictator who is now engaged in the slaughter of Communists and liberals alike in an attempt to make of his country a fascist-like base for a war against the Soviet Union. . . .
>
> [fol. 174] • • •
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>
> ". . . The Soviet Union does not threaten the peace of the world. The Soviet Union has not consorted with fascists, nor given support to Franco, does not maintain troops and bases in China and all over the world, does not have the atom bomb or new poison gas that can wipe out continents . . . More than all of this, the leaders of the Soviet Government have, since 1917,

been committed to an anti-war and anti-fascist policy —a policy which they have scrupulously adhered to." (P. 2, Pet. Ex. 144.)

The VALB in this convention passed a resolution equating "democracy" in China with the Communist forces opposing Chiang Kai-Shek, and urging precisely what the Party's program called for, namely, that "American troops and materials which are now aiding the Chinese fascists in a civil war against the people of China be withdrawn." (P. 9, Pet. Ex. 143.)

That Spain and China were actually facets of one struggle from the viewpoint of world communism is established, and that respondent so conceived them is further evidenced by respondent's Commander Wolff in the *Volunteer for Liberty* of April 1946 (Pet. Ex. 145) wherein he reports that a number of doctors had gone from Spain to China to "reach the Chinese Red Army," but that: "For three years they were kept isolated in a small village in Central China, far away from the fighting fronts. It seemed that Chiang Kaichek [sic] disliked these fighting anti-fascists . . . even then. But in that little village, as they bided their time, they did their work." (Pet. Ex. 145.)

As shown, both the Party and respondent equate "peace and democracy" in China with their particular policies. That this usage of "democracy and peace" comprehends Communist control and the protection of Soviet interests is further shown by a *Daily Worker* editorial of December 3, 1948 (Pet. Ex. 49), entitled "Victory in China":

> "Suchow has fallen. The Peoples Army marches on.
> "That is wonderful news *for democracy-loving persons everywhere. When Chiang gets kicked out, China will no longer be a base for war. It will join the great camp of world peace, making it that much more difficult for the 'cold war' plotters to start their anti-Soviet war.*" [Emphasis added] (Pet. Ex. 49.)

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[fol. 175] In considering respondent's lack of deviation from its implementation of Party policies, we have given due weight to the fact that most of respondent's officers and

a substantial number of its members are Party members or functionaries and that as such they are bound to accept and support Party policies. This is further evidenced by the fact that respondent's members, also Party members, lectured to Party clubs on these matters. For instance, Manny Lanser, Brownsville Section Organizer of the Party, Max Weiss, and Moishe Brier lectured at petitioner's witness Romerstein's Party Branch. Lanser, also a VALB member, spoke in the summer of 1947, analyzing the camp of world imperialism led by the United States and the camp of "peace and democracy" led by the Soviet Union. He discussed what Party branches could do to aid the cause of "peace and democracy" in a given situation. Brier also lectured the Party club on substantially these same matters.

Respondent offered no specific rebuttal to the foregoing evidence concerning its policy on China.

GREECE, THE TRUMAN POLICY AND MARSHALL PLAN

Concerning the Truman policy in Greece, the Party's position in opposition is established as set forth by the *Daily Worker*, March 13, 1947 (Pet. Ex. 47), in an editorial which charges that the institution of aid to Greece "marks a day of national shame for our country"; that it was based on the Nazi "Big Lie" that "the major conflict in the world today is between capitalist 'western civilization' and 'expanding Communism'"; and that "Neither the tax billions . . . nor the machine guns and tanks we are rushing to the Greek, Turkish nor Chinese reactionaries will be able to crush the people's struggles for democracy and independence." (Pet. Ex. 47)

In disseminating and supporting this Party position in its precise details, respondent in a special statement set forth in the *Volunteer for Liberty*, March 13, 1947 (Pet. Ex. 146), shows its use of "fascist" * as a synonym for those opposed to communism. Captioned "VALB DENOUNCES TRUMAN POLICY," it reads:

". . . 'Two wars against fascism has enabled us to tell a fascist from a democrat, the present government in

* This again shows that respondent's use of this term conforms with that of the Party.

Greece was imposed upon the Greek people by the tanks and bayonets of British Tommies. . . .'

[fol. 176]

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"'. . . as all imperialists must cloak their greed in crusading slogans, Truman, lacking in imagination, has had to borrow his slogan from Hirohito and Hitler, "we must save Europe and Asia from Bolshevism". All fascists will rally to this slogan—all men of good will will reject it.'" (P. 1, Pet. Ex. 146.)

The Party's interest in opposing the Truman policy with respect to Greece is shown by its November 1948 issue of *Political Affairs* (Pet. Ex. 46), in an article entitled "GREECE AND THE AMERICAN PEOPLE'S TASKS," which states:

"The second fundamental prerequisite for the Greek people's successful struggle, has been the existence of a powerful Greek Communist Party, the K.K.E.,* which through its magnificent leadership against the Nazi occupation grew from a minor to a major party, undoubtedly the biggest and most important political grouping in postwar Greece. . . .**

". . . It is the dominant force in the Democratic Government and Army. . . ." (P. 974, Pet. Ex. 46.)

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* It is important to note that the Party considers as a "prerequisite" for a successful struggle for "democracy," the existence of a powerful Communist Party. As shown, Communist Parties operated in Spain, Greece, and China, and with the support of the Soviet Union and the world Communist movement have succeeded in obtaining power in China.

** As shown, the Spanish Communist Party grew tremendously because of its so-called "anti-fascist" leadership and this again evidences the Communist use of anti-fascism to advance communism. In this connection, it is also established that Irving Goff, a VALB and Party member, instructed a Party Section meeting in 1946 that the Italian Communist Party, after the Allies invaded Italy in World War II, was able, due to Italian antipathy toward fascism, to recruit many thousands of members and greatly increase its influence.

The Party goes on to state in the article that the possibility that American troops will be sent to Greece can be used as a "lever" to arouse the people in support of a "democratic Greece," making the "key issue" the "demand for peace" and "an end to the Truman-Marshall Doctrine." It further states that "provided the Communists become the driving force of the campaign, the American people will fulfill their historic obligations." (P. 983, Pet. Ex. 46.)

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[fol. 177] As established by the evidence, respondent's policies concerning Greece, China, and the Truman Doctrine are summed up and placed in world perspective with the "forces of democracy" by the introduction to its compilation (of the ALB's organ published in Spain) entitled *Volunteer for Liberty*, dated January 17, 1949 (Pet. Ex. 50), which declares that:

> ". . . the enemy that still survives the Axis—is not nearly so worried about communism as it is worried about the extension of democracy . . . It was democracy —the simple aspirations of the people for security, for decency, for peace. *It is these aspirations, articulated ever more sharply and fought for ever more desperately, which the enemy today is attempting to suppress in Greece, in Palestine and Indonesia, in Indo-China, in the Marshall Plan countries and in great China as well as in America itself.*
>
> ". . . The partisans in the Greek mountains grow stronger despite reports of their imminent liquidation . . . *The 'dead' Republic of Indonesia is a very active corpse, indeed. And the Chinese 'bandits' are about to liberate four hundred million people from the tender ministrations of foreign capital and domestic quislings.*" [Emphasis added] (Pet. Ex. 50.)

At the Lenin Memorial meeting held by the Brooklyn Party on January 19, 1950, John Gates, high Party functionary and VALB member, spoke, hailing Lenin's correctness regarding imperialism as the era of dying capitalism and the age of the proletarian revolution. Gates took the position that the United States, being the leading imperialist power, was in the throes of dying capitalism. He

criticized the Truman Doctrine, the Marshall Plan, and the North Atlantic Pact as imperialistic and capitalistic, designed to gain control of the nations of Europe in order to prevent them from coming to an agreement with the Soviet Union and other European Communist nations. He further stated that the working class, under the guidance of Marxism-Leninism, could lay the groundwork for socialism in the United States and the overthrow of capitalism.

Hecht also shows that respondent's policies concerning Greece, after World War II, and the Marshall Plan were the same as those of the Party.

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[fol. 178] Respondent's evidence concerning its policy on Greece consists of a statement by Wolff under cross-examination that the VALB's policy generally was opposed to British and American intervention in Greece in 1949; he disclaims knowledge of whether respondent supported the People's government of Greece, but testifies that it may have taken a position on the Marshall Plan, and if so, it would have been generally in opposition to it.

KOREA

The Party, at the outset, opposed action by the United Nations and the United States in Korea characterizing Synghman Rhee as a puppet of imperialists, as is exemplified by the *Daily Worker* of June 26, 1950 (Pet. Ex. 174).*

Respondent adhered to this policy most precisely, urging "no intervention in Korea" and drawing a parallel between Rhee and Franco, as is shown by the *Volunteer for Liberty*, July 1950, reprinting the text of a letter it sent to President Truman:

> "'And just as Franco was the creature of Hitler and Mussolini, so Synghman Rhee and his clique were forced upon the Korean people by American brass hats....'" (Pet. Ex. 107)

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* See also Pet. Ex. 228, *Daily Worker*, April 16, 1951, and Pet. Ex. 229, *Daily Worker*, August 19, 1951, for further evidence of the Party's position in opposition to the United States' policy in Korea.

This issue of respondent's official organ, under the heading *"OUR SPECIAL ROLE,"* also stresses that its members must make maximum use of their status as Spanish war veterans ("being part of the one living tradition that most contemporary Americans respect and cherish") in rallying support for this and other causes in the "peace movement."

Korea is placed in perspective with China and Asia by the *Daily Worker* of December 13, 1950 (Pet. Ex. 177), which sets forth the Party position as of that time:

> "American honor, no less than American security, requires that the entire Korean 'gamble' be halted at once, before another American life is lost. Warren Austin seeks to evade the peaceful settlement which only the seating of People's China, the withdrawal of the U. S. from Taiwan, and a withdrawal in Korea can achieve. . . ." (P. 1, Pet. Ex. 177.)

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[fol. 179] Hecht, too, establishes that during this same period respondent's policy continued to be one of opposition to the United States' participation in the Korean War.

CONGRESSIONAL COMMITTEES

It has been a consistent policy of the Communist Party to oppose the existence and operation of Congressional committees on un-American activities.

That respondent has not deviated from the Party's policy on this matter is shown by a resolution passed at its initial convention in December 1939, condemning the Dies Committee and its "fascist tactics" * and protesting "the use of the people's money to support this vicious un-American Committee." (P. 3, Pet. Ex. 59)

This is further shown by the resolution passed at respondent's Eastern Seaboard Conference in February 1946, proclaiming: "Demand the termination of the Woods-Rankin Un-American Committee." (P. 5, Pet. Ex. 145.)

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* This usage of "fascist" conforms with that of the Party with respect to the same subject matter.

GERHART EISLER

An aspect of Party opposition to Congressional committees on un-American activities involved support of international Communist Gerhart Eisler. Pursuant to Party directions, Horvath attended a meeting in support of Eisler held on December 12, 1946, in West 48th Street, New York, at which Jack Bjoze, respondent's Executive Secretary, spoke in support of Eisler, stating that the VALB had been subjected to the same indignities as Eisler by Congressional committees and the Federal Bureau of Investigation, and promising respondent's full support to Eisler. A collection was taken up for an Eisler defense committee and the VALB contributed $50.*

In support of Eisler and in opposition to the Committee on Un-American Activities of the House of Representatives, the *Daily Worker* of February 7, 1947 (Pet. Ex. 53),

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[fol. 180] contains an editorial entitled "They Aim at Gerhart Eisler—But the Target Is Democracy," thus linking Eisler with "anti-fascism" and "democracy," charging "A crime is being committed in the case of a noble anti-fascist—the German refugee, Gerhart Eisler" and calling "for an all-out drive to eliminate this un-American committee from American life."**

Likewise, *"A STATEMENT BY THE VETERANS OF THE ABRAHAM LINCOLN BRIGADE"* published within a few weeks thereafter in the *Volunteer for Liberty,* March 1947 (Pet. Ex. 146), also equates Eisler with "democracy" and charges that "The Un-American Committee of the House of Representatives is the enemy of American democracy, not the man whom they imprison" and further that this "is also part of the ceaseless manoeuvers [sic] to create a hostile attitude against the Soviet Union and to

* Wolff testifies he does not know what respondent's policy was concerning Gerhart Eisler's deportation subsequent to World War II.

** The Party in *Political Affairs,* September 1948 (Pet. Ex. 51), and in *The Worker* of October 28, 1951 (Pet. Ex. 230), also utilizes "fascism" as an epithet for the Committee and "anti-fascist" to describe those in opposition to the Committee.

use this hostile attitude to expand the power of American imperialism at home and abroad." (Pp. 2-3, Pet. Ex. 146.)

Wolff testifies for respondent that he does not know whether the VALB had a policy with respect to Congressional committees on un-American activities.

INTERNAL SECURITY LEGISLATION

It has also been the consistent policy of the Party to oppose the enactment and enforcement of legislation directed at subversion, such as the Smith Act* and the Internal Security Act of 1950, among others.** In so doing, the Party has characterized such legislation as "fascist" or "pro-fascist" and has, using this Party cry, gained support even from "anti-Communists" for these policies as it has with reaching other of its immediate objectives. This is shown by the "Main Resolution" at its 15th National Convention reprinted in Political Affairs for January 1951 (Pet. Ex. 170), which also proclaims that "the fight for nullification and repeal of the McCarran and Smith Acts must receive top priority." (P. 11, Pet. Ex. 170.)

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[fol. 181] This Party program for repeal of the Internal Security Act was announced in the *Daily Worker* of September 25, 1950 (Pet. Ex. 175), immediately after its passage by headlines proclaiming: "OPEN DRIVE FOR PEOPLE'S VETO OF POLICE-STATE LAW."***

That respondent immediately became part of this program is evidenced by a letter dated October 21, 1950, received by Horan as a VALB member from respondent and signed by Moe Fishman as Executive Secretary (Pet. Ex. 108), which reads:****

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* 18 USCA 2385.

** See, e.g., Pet. Exs. 158, 167, 170, 171, 173, 175, 176, 177, 178, and 179.

*** For additional evidence of the Party's position, see Pet. Ex. 177, *Daily Worker*, December 13, 1950, and Pet. Ex. 179, *Daily Worker*, March 12, 1952.

**** For additional evidence of respondent's opposition to the Act and its enforcement, see Pet. Exs. 116 and 227, letters from respondent dated February 15, 1954, March 2, 1954, respectively, and Pet. Ex. 225, the *Volunteer for Liberty*, June 1954.

"... We have officially gone on record against the Act, and urge that each of you sits down and writes President Truman, voicing your individual opposition. The next phase of the campaign against the Act will be a drive on Congress to get it repealed. . . ."

Hecht also establishes that respondent's policy is to oppose this Act and its enforcement. He attended a VALB meeting at the Malin Studios in 1949, called specifically to hear John Gates speak, then a defendant in a Smith Act trial. Gates discussed the Smith Act and the then embryonic "McCarran Act," pointing out that the terms of these acts would destroy the VALB.

In opposing the Smith Act and its enforcement against its leaders, the Party has consistently had a program calling for repeal of the Act, amnesty for Party leaders convicted thereunder, and the dismissal of indictments and prosecutions. This program is summed up by an editorial in the *Daily Worker* of March 12, 1952 (Pet. Ex. 179).

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[fol. 182]. The record is replete with examples of respondent's adherence to the same policy and its activities on behalf of Party leaders indicted and convicted under the Smith Act,* including both members and non-members of respondent.** Respondent participated in picket lines,***

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* See Pet. Exs. 21, 109, 110, 111, 112, 113, 114, 115, 159, 160, 162, 163, 164, 165, 167, 204, 213, 214, 216, 217, 220, 221, 222, 223, and 224.

** Members of respondent convicted for violation of the Smith Act include John Gates, Irving Weissman, Steve Nelson, Bob Thompson, and Saul Wellman. Wolff testifies that respondent supported Smith Act defendants and opposed the Smith Act as it was its belief *as an organization* that this Act aimed at the destruction of a political party, and further that respondent would have opposed this Act even though none of its members was involved as a defendant.

*** Lautner, for example, establishes that the VALB's participation in a picket line around the Foley Square Court House in New York City in 1949, during the trial of Party leaders, was pursuant to Party direction and control. The *Daily Worker*, June 11, 1950, shows the VALB picketing the White House in protest against the jailing of Eugene Dennis, then CPUSA General Secretary. (Pet. Ex. 156.)

parades, fund-raising affairs, sponsored rallies, conducted mailing and write-in campaigns, sent telegrams, formed defense committees, raised and contributed funds, organized international campaigns,* and gave extensive publicity urging support for and on behalf of Party members, including those who were not VALB members, against whom action had been taken under the Smith Act.

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[Tol. 183] Respondent continuously attempts to connect Smith Act prosecutions with an alleged pro-Franco (fascist) policy of the Government, stressing in these activities the "veteran" status of its members. For example, the *Volunteer for Liberty,* September 7, 1951 (Pet. Ex. 213), distributed to its members, charges, quoting a telegram sent to President Truman, that the arrest of its members Irving Weissman and Steve Nelson proves that the Smith Act "is being used for illegal persecution of anti-fascists." The November 14, 1951, issue of the *Volunteer for Liberty* (Pet. Ex. 215) reprints a letter from Steve Nelson thanking respondent for its aid on behalf of him and Irving Weissman.

The *Volunteer for Liberty* of October 26, 1951 (Pet. Ex. 214), received through the mails by Hecht, as a VALB member, shows a concerted effort to delay Smith Act enforcement and respondent's active participation in such efforts, providing that "The fight that Bob, Johnny and the others put up has delayed the reactionary forces out to silence all of us." It also announces the formation of a "COMMITTEE TO DEFEND LINCOLN VETERANS, ORGANIZED TO AID VICTIMS OF SMITH ACT AND OTHER POLITICAL PERSECUTIONS," of which Dr. John L. Simon was made chairman and Dan Groden, sec-

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* The *Volunteer for Liberty,* April 25, 1951, shows the international coordination between respondent and foreign International Brigade veteran organizations on behalf of Party leader Nelson, in reporting: "From the International Brigade Association of Britain, we get word from Alec Digges that they got the info we sent on the Steve Nelson case and went to town. They have had a number of resolutions passed by labor organizations to be sent to Mayor Lawrence. They are also organizing a protest to the American Embassy in London. The next issue of the British 'Spain Today' will carry a story on the Nelson frame-up." (Pet. Ex. 109.)

retary-treasurer.* (P. 1, Pet. Ex. 214.) The *Volunteer for Liberty*, November 29, 1951 (Pet. Ex. 216), also shows respondent's intensified activity in this cause.

In the *Volunteer for Liberty* of February 8, 1952 (Pet. Ex. 217), respondent publishes a statement from its Committee to Defend Lincoln Veterans which further exemplifies its propagandic linkage of Smith Act prosecutions with United States policy concerning Franco Spain,** charging "that the conviction of Steve Nelson . . . is part of the deal between the Truman administration and the Franco tyranny in Spain"; that "the Truman administration is endeavoring to build up the big lie that 'to be anti-Franco is to be un-American and subversive.'" (P. 2, Pet. Ex.

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[fol. 184] 217.) A "CALL FOR ACTION" by "anti-Fascists" from Irving Weissman, reprinted in this exhibit, also shows that respondent's program on behalf of Smith Act defendants also includes Party leaders not members of respondent.

The *Volunteer for Liberty* of October 6, 1952 (Pet. Ex. 220), reprints a statement from Party leader Steve Nelson which evidences that respondent gained support for convicted Party leaders which otherwise might not have been obtained:

> " . . . *The Vets have brought my case to many parts of the world as well as to people who wouldn't have been in the fight today. That is the point which really counts—for we cannot hope to win this alone.*" [Emphasis added.]

Also set forth is a report of a midwest conference held September 21, 1952, for support of the "PITTSBURGH SMITH ACT VICTIMS," at which the VALB had a delegation present, which shows an upsurge of VALB activity in its local posts as well as the international sphere of respondent's operations. It recognizes the functioning of

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* It is important to note that both Simon and Groden were identified herein as Party members.

** In this connection, see also Moe Fishman's statement in Pet. Exs. 221 and 223, *infra*.

respondent and its members in furnishing leadership to this Party program and in reaching broad masses not reached by others:

> "An outstanding feature of all the reports was the tribute paid to the Lincoln Brigade for the tremendous contributions made by the organization as a whole and by many Vets as individuals who provided leadership and helped focus attention on the importance of the fight for Nelson. *Even more important was the role of the Vets in reaching broad masses of people not reached by other organizations.*" * [Emphasis added.] (P. 4, Pet. Ex. 220.)

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[fol. 185] Moe Fishman, as respondent's Executive Secretary, in the *Volunteer for Liberty*** of November 6, 1952 (Pet. Ex. 221), received by Hecht through the mails, again links Smith Act prosecutions with an asserted pro-Franco Government policy, alleging that "American imperialists" have launched a campaign to destroy the VALB. Fishman also emphasizes that respondent's destruction and the loss of its influence would be "dangerous to the world wide movement against Franco and for peace." ***

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* This, too, evidences that respondent acquires support for the Party that it otherwise would not receive.

** Respondent's witness Morgan states that the *Volunteer for Liberty* did not contain a regular column devoted to the whereabouts and activities of respondent's members because to put such information into this publication, such as names and addresses, would give the Federal Bureau of Investigation information and would result in such members being hounded and losing their jobs. He explains that persons mentioned in the *Volunteer for Liberty* are mostly those who have already been "persecuted and thrown in jail" like Bob Thompson. He states, "take me for instance, they would not put my name there and address in the paper because it would invite the FBI agents around hounding me . . ." (Tr. 3377-78.)

*** Concerning the so-called world-wide movement for peace, the *Volunteer for Liberty*, July 1950 (Pet. Ex. 107), shows that respondent had a policy and a program involving the circulation of peace petitions in its own name in support of the "Stockholm peace petition."

A letter of January 9, 1953, from respondent (Pet. Ex. 223), which Hecht, as a VALB member, received through the mails, sums up respondent's policies, which in the main have heretofore been shown to be identical to those of the Party, emphasizing again that: "Smith Act, State Sedition, deportation, passport and other harassing cases have been linked by us to the governments drive for a war alliance with Franco Spain," pointing out that respondent is especially proud of the "international support" it has been able to rally for "our many comrades attacked by American reaction."

The *Volunteer for Liberty,* February 19, 1953 (Pet. Ex. 224) (also received by Hecht through the mails), urges action on behalf of those prosecuted under the Smith Act and also shows continued VALB activity in support of high Party functionaries.

Respondent's witness Wolff testifies that it has actively supported its members indicted under the Smith Act. Under cross-examination, he states that respondent has been critical of policies of the United States Government

[fol. 186] and of the governments of England and France, but he knows of no instance where the VALB has ever taken a stand or position in opposition to the Soviet Union. He testifies further that respondent has been critical of leaders in public life from both the Democratic and Republican political parties and has criticized these parties; however, he can remember no instance when respondent has been critical of the leaders of the Communist Party or has ever adversely criticized the Communist Party, stating that "no such occasion would arise."

Accordingly, it is concluded that respondent consistently takes and advances positions on matters of policy which do not deviate from those of the Communist Party and the world Communist movement; and that respondent supports, promotes, and implements these policies and thus renders material aid to the Party and the world Communist movement. To the extent respondent's evidence conflicts with this finding; it is contrary to the weight of the evidence.

OTHER SUPPORT BY RESPONDENT OF THE PARTY AND THE WORLD COMMUNIST MOVEMENT

As has been shown in the foregoing portions of this Report, respondent functions as a medium through which the Party circulates its positions and extends its influence. Further illustrative of this activity, which is respondent's major function, is the experience of petitioner's witness Romerstein.

In early 1947, as Educational Director* of an American Youth for Democracy club (hereinafter called the AYD) in which his assigned Party function was to involve its members in the various activities of Party-controlled organizations, Romerstein, pursuant to instructions to go to Communist mass organizations and obtain material for use in these pursuits, visited VALB headquarters. There he encountered an office girl, who was a Party member and who invited his assistance in the Headquarter's office work, which he subsequently did as time permitted.

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[fol. 187] At the suggestion of Arthur Gordon, Party functionary in AYD, Romerstein later interviewed Wolff, with Jack Bjoze participating, for an article in *Neighborhood Youth,* stating to Wolff the purpose of this publication, which, as published by the AYD in the Brownsville area, operated to present the Party line to the young people in the neighborhood. It was controlled by a small group of Party members including Romerstein and Gordon. The March 1947 issue of this publication (Pet. Ex. 209) contains the article written by Romerstein as a result of the interview with Wolff, soliciting support for the VALB's postcard campaign to persuade the UN to break relations with Franco.

Subsequently, Romerstein, as AYD Club Educational Director, received through the mail from respondent a letter dated August 15, 1947, signed by Wolff as National Commander (Pet. Ex. 211), announcing that in the near

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* Romerstein's position in the AYD and the Young Progressives of America were ostensibly elective offices, but he was actually appointed to these positions by the Party through control exercised by Party functionaries.

future the United Nations General Assembly would take up the case against Franco Spain. This letter goes on to recite that a recent conference of the General Council of the World Federation of Trade Unions held at Prague concluded that " 'there must be further demonstrations of international solidarity for the benefit of the men and women of Spain who are setting such an example in Spain.' " and Wolff, accordingly, invites the AYD to participate in various prospective "pro-Republican Spain" activities of respondent and to send delegates to a forthcoming conference.

Showing the coordinate functioning of the Party in this matter, Leon Wofsy, New York State AYD Executive Secretary and also National Youth Director of the Party, by letter dated September 3, 1947 (Pet. Ex. 210), to Romerstein as AYD Club Educational Director, specifically directs attention to the offer of respondent to provide speakers, and suggests that the AYD club avail itself of VALB speakers, and take action to elect a delegate to the conference referred to in Wolff's letter.

Romerstein, too, in this regard shows that it is a Party tactic to utilize the facade of another organization for the purpose of mailing out literature to recipients who would not be responsive to such literature if sent from the Party itself. He explains that this was done frequently, and that where there was a choice of signing a letter as an official of the Party or of another organization, the other would be chosen to make it more effective.

As the foregoing evidence illustrates, the Party working through its members in the AYD utilized the VALB as a means for disseminating its views and gaining support for its position in the AYD.

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[fol. 188] Similar Party utilization of respondent is evidenced by Horvath, who attended an Executive Committee meeting of the Party's Yorkville Club in New York City in March 1946, where it was announced that the Party was going to use as ostensible sponsors for a peace conference to be held in Washington, D.C. in early April, its various controlled organizations, including the VALB. All Party clubs and branches were to send delegates to this conference, and a representative from Horvath's club was se-

lected and a collection taken up to defray the expenses of her trip to Washington.

Also showing material aid to the Party through advancing the *Daily Worker* and the functioning of respondent as a stimulus and symbol for the Party, is the experience of Budenz as Editor of the *Daily Worker* and that of Horan as a member of respondent. At a Politburo meeting in 1941 with Budenz present, Roy Hudson reported on th formation of "Browder Brigades" to increase the circulation of the *Daily Worker,* and respondent was instructed to take a leading role in this drive so as to give it stimulus and set an example for other Party members. In furtherance of this, and as a result of the aforementioned Politburo meeting, Budenz as Editor of the *Daily Worker* was given a statement by Harold Smith, Robert Kirby, and others of its signers* which was thereafter printed in the *Daily Worker* of August 8, 1941 (Pet. Ex. 237), as a "call" issued by "a group of veterans of the Abraham Lincoln Battalion." The Recommended Decision construed this "call" as a statement of respondent, based on Budenz' testimony that respondent was instructed at the Politburo meeting to participate in this undertaking and that it was a common device of the Party to have special committees appointed which were utilized repeatedly in various forms when Party organizations were committing themselves to a Party undertaking, in order that they might maintain their anomalous role of not being under Communist control. Budenz thus explains the reference in Pet. Ex. 237 to a group of veterans, and states that they officially represented the VALB to the Party, and that the meeting and campaign therein discussed were officially undertaken.**

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* Signers of this statement were Walter Garland, John Gates, Charles Keith, Robert Kirby (also known as Robert Klonsky), Leonard Lamb, Manny Lanser, Vaughn Love, Harold Smith, George Watt (also known as Kvatt), and Sol Wellman, all VALB members. Smith, a combination bodyguard and secretary for Browder, had frequent Party contact with Budenz and discussed the VALB on many occasions.

** Respondent's exceptions directed to this evidence, including the assertion that these facts were beyond Budenz' knowledge, are lacking in merit and are overruled.

Budenz so testifies and the record shows that there were

[fol. 189] no protests from respondent that its name had been used in connection with the Browder Brigades, but that quite to the contrary, respondent continued through the years to cooperate with the Party and to symbolize devoted Party fighters.

The text of this call is significant in that it refers to the Communist Party as "Our Party" and notes that: "The most loyal, the most active Party members have been asked to volunteer for service in this [Browder] Brigade which has been linked in Party statements to the Abraham Lincoln Battalion, which was the vanguard of the American people's struggle against fascism." (Pet. Ex. 237.) This call also shows respondent's conception of its activities in support of the Party as equivalent to filling a military need linking peaceful and military forms of struggle, just as did the ALB operation in Spain, in stating "what is needed now is not a Browder Brigade to fight at the side of the Red Army, but a brigade that will arouse the entire Party" and further that:

> "'The "vets" understand from their experience in Spain the tremendous value of the aid and sentiment rallied for the Spanish Republic by our Party comrades who were not fortunate enough to serve on the firing line. *This was a vivid illustration of the interdependence of peaceful and military forms of struggle, of the front and the rear.*'" [Emphasis added.] (Pet. Ex. 237.)

The special access of the VALB to the "ear of the American people" and the interconnection of this campaign and the Party objectives are also spelled out in this statement, which links the Red Army, the Abraham Lincoln Battalion, and the Browder Brigade in the fight against fascism. The importance of the Party's press to respondent is also emphasized:

> "'*We veterans have always felt special love and need for the Daily and Sunday Worker. It was the voice of our struggle in Spain.*'" [Emphasis added.] (Pet. Ex. 237.)

Wherein this call provides: "'Let each veteran join the Brigade and prove title to leadership by the work he does. Let us impart whatever we have learned of discipline and organization to the others in the Brigade,'" it, too, evidences that respondent's members occupy a leadership status in the Party and constitute trained and disciplined cadres.

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[fol. 190] An article by Party leader Hudson which grew out of the same aforementioned Politburo meeting was brought to Budenz personally by him to see that it would be published on the front page of the *Daily Worker*. So published, it comprises Pet. Ex. 236, *Daily Worker*, August 9, 1941, and again shows the VALB used as a Party stimulus and symbol, and as a means of promoting and supporting the Party and the Soviet Union through expanding the circulation of *The Worker* by the Browder Brigade; the immediately stated purpose being to insure that the people "find out the truth about the Soviet Union and its magnificent Red Army." (Pet. Ex. 236.)

Budenz also establishes that the term "Abraham Lincoln Veterans" * used in this article likewise refers to respondent and that this was discussed in the preceding Politburo meeting.

On the 30th of August 1941, at a VALB meeting in Chicago, Morris Childs, Illinois Party Secretary, directed respondent to work in building the Party and in particular the Party's press in honor of Earl Browder, and in so doing, to take advantage of any national sympathy that the Soviet Union had obtained through having been attacked by Nazi Germany. As a result, a Browder Brigade was formed in Chicago, in which Milton Cohen, Lou Gayle, and witness Horan were designated as lieutenants, and Irving Herman, Party functionary, as captain. The Chicago VALB actively participated in this campaign and sold *Daily*

* Wolff also shows that in Resp. Ex. 27, *New York Post*, December 28, 1949, and in Resp. Ex. 31, *New York Times*, December 30, 1944, the "Abraham Lincoln Brigade" referred to the VALB and was so intended. He states that there was no other organization in New York except respondent referred to as "Abraham Lincoln Brigade." (Tr. 3752.)

Worker subscriptions. In the summer of 1939, respondent also aided in the distribution and sale of the Party newspaper *Midwest Daily Record* pursuant to a Party request to do so.

The record also shows that a number of respondent's members, who were also Party members, including witness Harris, actively supported the *Daily Worker,* and that some who were high Party functionaries urged other Party members to do likewise. In fact, Harris and Party Organizer Quincy Goldberg, in early 1947, used respondent's offices to discuss the distribution of the *Daily Worker* in

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[fol. 191] the Bronx of New York City, and were criticized by Milton Wolff as being very stupid for discussing Party matters in respondent's offices.

That the promotion of the *Daily Worker* by respondent's members was in furtherance of making the Party more effective is further evidenced by Party Organizer and VALB member Abe Osheroff, who urged a Party club to promote the *Daily Worker* in order to bring the Party to the people, explaining that there is no such thing as spontaneous mass action but that such action stems from the impetus which the Communist Party exerts on the people to think correctly.

Budenz explains that to the Party, respondent's aid in forwarding the *Daily Worker* was a very definite contribution to the advancement of Marxism-Leninism, as this paper is the official organ of directives to Party functionaries and followers throughout the United States and is considered the chief "treasure" of the Party.

In addition to aid in behalf of the *Daily Worker,* respondent has aided the Party in numerous other ways, such as: providing speakers at Party functions; supporting Party fund-raising affairs such as picnics, parties and rallies; selling and making available for sale in VALB offices Party publications and literature; participating in picket lines organized and conducted by the Party; and sponsoring rallies where high Party functionaries are featured speakers.

The record also establishes that members of respondent have been considered trustworthy by international Soviet agents and have functioned as international couriers for

the Party and the world Communist movement; that respondent and certain of its members have been honored by international Communists for their activities and, in turn, have paid homage to international Communist leaders, including Stalin; and that respondent has raised and contributed funds for international Communists, all of which further evidences that respondent is an instrument of the Communist Party in the United States, and renders support to it and the world Communist movement.

While on a world trip as a merchant seaman in February 1940, Hecht was contacted at Vladivostok, USSR, by a member of the Soviet secret police who asked him to show his VALB membership book to establish his "bona fides." Thereafter, the agent proposed that Hecht take training in the Soviet Union after which he would return to his occupation in the United States as a merchant seaman and function as an agent of the Soviet secret police doing

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[fol. 192] espionage work in this country and elsewhere. Hecht accepted the assignment in good faith at the outset and received $350 to pay his expenses back to the Soviet Union from the United States, but later changed his mind and spent this money, part in Saigon, French Indochina, and part in Valencia, Spain. Upon arriving in the United States, he was questioned concerning the money by Charlie Keith, Party Section Organizer and VALB member, and upon relating that he did not have it, Hecht was subjected to abuse and called an "enemy of the working class." Keith stated he had received word through channels that Hecht had been given money in Vladivostok to deliver to underground elements in Saigon, and accused Hecht of falling down on this assignment.

Sid Kaufman, a VALB member, told Hecht that, upon arriving in Vladivostok as a merchant seaman a week or so after Hecht had been there, he also was approached by a Soviet agent with substantially the same proposition.

Harris, who obtained a job as a seaman through Party and VALB members, was told to report to both organizations before leaving and upon returning from each trip, so he complied with these instructions.

On a trip to England, Harris was told by "Frenchy" Robinson to contact one Bob Pugh in Southampton, which

he did, and was told to tell the VALB that it should send over "any athletic equipment" as it was badly needed. Harris relayed this message to "Frenchy" Robinson at the VALB and to John Robinson at the Party Waterfront Section, and it was received without reply or comment.

Pursuant to this joint practice of the Party and respondent, Harris, in early 1945, was called by Bill McCarthy, a VALB member, then a dispatcher at the National Maritime Union, to go to North Africa as an alternate courier on an "important trip." All Harris knew was that the regular courier was Bob Higgenbottom, and the mission necessitated leaving the ship in North Africa and proceeding to a given destination to make a delivery. Harris was alternate, if for any reason Higgenbottom could not leave the ship in Africa; however, both left the ship at Casablanca and presumably the latter performed his mission, returning to the United States two months later.

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[fol. 193] Concerning the raising of funds, respondent's continuous and numerous activities are also evidenced by applications for public solicitation licenses and financial reports filed with the City of New York Department of Welfare, Division of Public Solicitations, which comprise Pet. Ex. 67 (January 1940), Pet. Ex. 68 (February 1940), Pet. Ex. 69 (November 1940), Pet. Ex. 70 (February 1941), Pet. Ex. 79 (March 1941), Pet. Exs. 71 and 80 (February 1942), Pet. Ex. 72 (February 1943), Pet. Ex. 73 (November 1946). Pet. Ex. 74 (February 1947), Pet. Ex. 76 (November 1947), Pet. Ex. 78 (November 1950), and Pet. Ex. 77 (April 1951).*

This record compels the conclusion that the primary benefit of funds so raised inures to the Party and the world Communist movement. The aid to the Party occurs primarily through the payment of salaries to Party representatives holding offices or other posts in respondent or through employment by it in connection with its various

* Respondent in March 1953 also jointly sponsored a rally in commemoration of the founding of the Spanish Republic at which a collection was taken up. See also, "Discussion of Law," *infra*, for other recent activity.

campaigns, including among others, Milton Wolff, Moe Fishman, Dan Groden, Vera Bunin, Jack Bjoze, Phil Bard, Felix Kuzman, and Edward Robinson. As shown by its financial reports and solicitation license applications to New York authorities, a substantial portion of respondent's income has been paid out in the above manner as salaries and expenses.

Respondent has been in contact with former International Brigadiers and their organizations in other countries, including England, France, Poland, Italy, Spain, Mexico, Yugoslavia, Czechoslovakia, and Germany, among others. These contacts have been in part maintained through Party functionaries and VALB members traveling abroad and reporting to respondent, such as witness Harris, Joseph Starobin (*Daily Worker* correspondent), John Gates, Party National Committee member, and Felix Kuzman, among others. Also, the official organ of the Communist Party of Spain, *Mundo Obrero,* has carried information concerning activities of these foreign International Brigade veterans which respondent has reprinted in its organ (see, e.g., Pet. Ex. 195).

Gerhart Eisler, an honorary VALB member, reported on the world situation at a closed VALB meeting in 1947, with witness Harris, George Watt, Leonard Lamb, "Frenchy" Robinson, and Steve Nelson, among others,

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[fol. 194] present, and dealt with conditions in the Eastern Zone of Germany and in England, stating that the time was rapidly approaching when the world revolution would take place.

Respondent's aid to foreign "veterans" is here viewed in the light of their activities as publicized by respondent with approbation in its official organ and in its convention proceedings, which indicates that they, too, evolved as responsible Communists in their respective countries. This is manifested by Jack Bjoze, respondent's Executive Secretary, reporting to its Fifth National Convention in late 1946, wherein he emphasized the leading part that former International Brigadiers were taking in the European underground movements and "people's armies," and the pre-

eminence of these men in countries which were then coming under Communist domination:

> "When the whole story of the underground movements in Europe is told, the world will know that men in the International Brigade have everywhere played an important role. We already know of some. Major Gen. Rodintsev, one of the defenders of Madrid, who covered his name with glory in the battle of Stalingrad....
>
> "It was not surprising to find amongst the leaders of the Corsican Peoples Army the name of Vittori, well known International Brigader...
>
> "Yugoslavian International Brigaders hold the highest positions in the Peoples Liberation Army. Among the International Brigaders in the Peoples Army of Yugoslavia are Gen. Kosta Nadj, Commander of an army corps; General Petka Dopchevich, liberator of Belgrade; Dr. Nicholich, Chief of all the medical services of the Yugoslav army, with the rank of General.
>
> "Our own Gen. Walter, Commander of the 35th Division in Spain and later the liberator of Warsaw, is now a Vice-Minister of the Polish Government." (P. 4, Pet. Ex. 143.)

Respondent also publicizes the high positions of other former International Brigadiers including: Col. Gen. Enver Hodza, Chief of Staff in Albania; Sabi Dimitroff, partisan hero in Bulgaria; Vidalis, partisan hero in Greece; and Dr. Bethune, Chinese 8th Route Army, among others.

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[fol. 195] Respondent's Commander Wolff, writing in the *Volunteer for Liberty,* April 1946 (Pet. Ex. 145), on "The International Brigaders," shows again that the world-wide perspective of their activities continued after leaving Spain. Wolff writes that "Luigi Gallo, commissar of the International Brigades, now known as Luigi Longo, top commander of all the partisan armies of Northern Italy," in proclaiming "'Today Milano has been liberated—tomorrow, MADRID!'" was "speaking not only to the people of Italy but to the people of Spain, as well. And not only Gallo."

Respondent's 1946 convention passed a resolution to initiate a campaign to collect funds and supplies for imme-

diate shipment to foreign International Brigadiers, proclaiming that they are among the leadership in the task of "democratization of their countries." (Pet. Ex. 143.)

As earlier found, respondent has accorded aid to these former brigadiers pursuant to the policy of the Party and the world Communist movement and the extent of further aid is shown by the solicitation applications and financial statements above referred to, namely, Pet. Exs. 67, 68, 69, 73, 74, and 75 which expressly include them as beneficiaries of the funds raised or reported on.

Many of the foregoing documents also include the UGT (Communist-controlled Spanish trade union organization in which Horan had been an honorary member while with the ALB in Spain) as a beneficiary of funds raised by respondent. A financial report filed with the New York authorities by respondent in May 1948 shows that $1650.00 was raised by street solicitation, over $1000.00 of which was used to help the UGT.

Further in this connection, Harris, as a member of respondent, assigned by Jack Bjoze of the VALB to do so, assisted Moe Fishman in packing materials and supplies which ostensibly were going to those suffering in Spain from Franco's regime but which were actually being sent to the Communist underground in Spain. Fishman stated this aid was necessary because the underground was at that time increasing its activities and greatly needed supplies. Harris explains that Fishman could readily guarantee that the packages would be delivered to Communists in Spain by sending the materials to France where they would be reshipped into Spain.*

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[fol. 196] When this evidence is viewed in the perspective of this record it constitutes additional proof that respon-

* The above evidence is also corroborated by official representations made by respondent and recorded in a joint report prepared by witness Silverstein as an official of the New York Department of Welfare in connection with a solicitation license of respondent which along with the latter constitutes Pet. Ex. 74. This also evidences that respondent in shipping materials to the Spanish underground shipped them to UGT headquarters in Paris, France, and from there to Spain.

dent operates in support of the Party and the world Communist movement.

Concerning the homage paid Communist leaders by respondent and that paid to respondent by them, it is established that General Walters, Vice-Minister of National Defense of Poland, formerly Commander of the 35th Division in Spain of which the 15th Brigade was a part, and International Communist functionary, was honored at a dinner party given by respondent during its Fifth National Convention in New York in 1946. Walters attended respondent's convention and in turn honored certain of its members. Described by respondent as a "leading anti-fascist" he presented "the Dombrowski medal of the Polish IB" to six men "selected for special distinction in the continuing movement to oust Franco and help restore the Spanish Republic." (P. 7, Pet. Ex. 143.) Among these six so honored by Walters, and significantly enough nominated for this honor by respondent, were Alvah Bessie, Jack Bjoze, Milton Wolff, and Paul Robeson (honorary VALB member), all also Party members.

Robeson, in addressing this convention, is reported by respondent as saying that he, too, "honored all anti-fascists" * and that "He wasn't going to knuckle down before red-baiting because he knew and we knew that the most consistent anti-fascists were the Communists and he was going to continue to say so at every opportunity." (P. 7, Pet. Ex. 143.)

Further evidence of recognition by world Communist leaders of respondent's services is shown by the *Volunteer for Liberty* issued in late 1948 (Pet. Ex. 85), which reports that "Luigi Longo (Gallo) decorated the Brigade with the Garibaldi Medal and Certificate of Achievement through Johnny Gates when Johnny was in Italy."

That respondent also paid homage to Communist leaders is shown by the statement of Wolff as National Commander and Fishman as Executive Secretary, in veneration of Stalin sent to Andre Gromyko in March 1953 (Pet.

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* Compare in this connection the established Party's use of the term "Fascist" to describe the chief enemies of the Party, discussed at the outset of this Report.

Ex. 172), which emphasizes that: "'We who fought in
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[fol. 197] Spain as part of the International Brigades remember with gratitude and admiration that it was Joseph Stalin who helped rally the forces of anti-fascism with his never-to-be-forgotten solgan, "The cause of Spain is the cause of all advanced and progressive mankind," and that ". . . we deeply mourn the death of our great ally against fascism, Joseph V. Stalin."'"

Respondent by way of defense, principally through Wolff, offers evidence that it also took positions on various matters on which the Communist Party is not established to have taken any position; that it conducted rallies, meetings, and affairs at which there were organizations and people in attendance or participating who were not Party members or shown to be connected with the Party; that it and its members performed honorable service for the United States during World War II after Hitler's attack on Russia; and that it received publicity, aid and support from sources other than the Communist Party, the general purport of which is to show that respondent is not dominated and controlled by the Party and not primarily operated to aid and support it and the world Communist movement. Wolff also testifies that in soliciting support for the various policies and programs, respondent does not indicate that it is associated with the Party, which association he denies.

This evidence, however, with minor exceptions, does not directly meet, or rebut the mass of specific and detailed evidence presented by petitioner. The bulk of respondent's evidence simply shows that it has some areas of operation and functions which do not directly or totally involve the Communist Party, except that Wolff and Fishman, both Party representatives, have presided over such operations in recent years.

Discussion of Law

Respondent excepts to the finding in the Recommended Decision that it is shown to be an association within the meaning of section 3(2)* of the Act on the grounds that

* Section 3(2) provides in its entirety: "the term 'organization' means an organization, corporation, company, partnership, asso-

this is unsupported by the evidence. Respondent asserts in argument that it was served in this proceeding as a corporation and defended itself as a defunct corporation as authorized by the corporation laws of New York State.

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[fol. 198] Although described in the petition as a membership corporation of New York State, petitioner, after submitting proof of fact, moved, on November 9, 1954, pursuant to Rule 201.8* of the Board's Rules of Procedure, for leave to conform the petition to the proof, by amendments to the effect that respondent was in fact dissolved as a corporation by proclamation of the Secretary of State on October 15, 1952, pursuant to section 203-A of its Tax Law,** and has since continued to exist and operate as an organization, to wit, an association and group of persons associated together as defined in section 3(2) of the Act. Respondent opposed the amendment and the parties submitted written memoranda in support of their respective positions on November 10, 1954.

By ruling of the Hearing Panel of November 16, 1954, petitioner was granted leave to amend and respondent was afforded opportunity, upon request, to present any further relevant and material matters by way of defense as might be reasonably necessary as a result of the amendment allowed. On November 17, 1954, petitioner filed the amendment and respondent thereafter filed a denial of this allegation, but presented no new matters by way of defense as a result of the amendment.

It was found in the Recommended Decision that respondent has continued to exist and function since October 1952, as an organization, as defined in the Act, and that the real effect of the amendment was but to cure a techni-

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ciation, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects."

* This rule provides in pertinent part as follows: "At any time during the course of the proceedings, either party may, with the consent of the Board, a member thereof, or a hearing examiner, amend or conform the pleadings to the proof.

** Pet. Ex. 260 is certification to this effect by the Deputy Secretary of New York State.

cal misdescription of respondent in the petition. Upon a review of the entire record we find this conclusion to be sound and we will briefly here review the factual basis which supports this.

Respondent accepted service of the petition, filed motions addressed to the merits of the petition, duly filed an answer, appeared at the hearing and was represented by competent counsel who requested and was given the privilege of having as his assistants in the hearing room at all times Milton Wolff and/or Moe Fishman for the reason that they were represented as respondent's present National Commander and Executive Secretary, respectively, and necessary to the defense.

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[fol. 199] Throughout the entire proceeding, counsel for respondent and its officers and witnesses (in addition to those of petitioner) indicated that respondent was an existing membership organization, see, e.g., Tr. 2534, 2535, 2828.

Illustrative is respondent's witness Morgan's testimony under cross-examination that "We are together and have an organization." (Tr. 3323) and although assertedly he never had a VALB membership card, he testifies, "we got the organization, but we don't have the cards." (Tr. 3329.)

The sum of Wolff's testimony (respondent's National Commander since 1939), including both the direct phases and the cross-examination thereon, is that respondent has continued to operate after its corporate form was dissolved, but that its activities with the passing of the years have involved its membership, as such, in a diminishing degree, with primarily the Executive Secretary, Moe Fishman, and himself acting for the VALB.

Although on direct examination Wolff states that after forfeiture of its corporate charter, respondent did not to his knowledge characterize itself as a corporation or a partnership, but simply described itself as the VALB, and has held no reorganizational meetings or conventions or elections of officers, he testifies under various phases of cross-examination that whether or not incorporated, respondent has continued as an organization known as the

VALB and has continued to publish the *Volunteer for Liberty* from time to time.*

He confirms that Pet. Ex. 227 is a letter from respondent, signed by Moe Fishman,** dated March 2, 1954. Significantly, the letterhead is identical to that used by respondent prior to 1952, and is captioned solely, "Veterans of the Abraham Lincoln Brigade." Wolff also agrees that Pet. Ex. 225, the *Volunteer for Liberty* of June 1954, was published by the VALB.

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[fol. 200] He further confirms that respondent continues to occupy and maintain the same offices in 23 West 26th Street in New York City; that the office of Executive Secretary held by Moe Fishman for the past five or so years. is not elective and that he persuaded Fishman to accept it; that Fishman is paid a salary as Executive Secretary and that he (Wolff), too, is presently on the VALB payroll and has been since May 1954; that their salaries, as well as expenses for maintaining the office, paying rent, etc., are paid*** from funds raised by the VALB through the sale of publications, the holding of meetings, fund-raising affairs, and through solicitations in special campaigns, which are undertaken as VALB functions and not as individual activities; that a bank account is maintained in the name of the VALB in the Amalgamated Bank of New York; that respondent presently maintains a mailing list for purposes of circulating its literature and of seeking support for its policies and functions or affairs sponsored by it, and for soliciting funds; and that it maintains another list for the purpose of mailing the *Volunteer for Liberty*. These lists are not limited to members of respondent but include other

* Pet. Exs. 221, 222, 224, and 225, are copies of the *Volunteeer for Liberty* so published, dated November 6, 1952, December 5, 1952, February 19, 1953, and June 1954, respectively.

** Pet. Ex. 223 is also a letter from Fishman as Executive Secretary of the VALB, dated January 9, 1953, received by Hecht through the mails as a VALB member.

*** Wolff, although respondent's principal officer, disclaims any knowledge of its financial affairs and of the arrangement, lease or otherwise, by which VALB occupies its offices. He assumes the VALB maintains financial records which would reflect his salary.

persons as well. As to membership dues, he declares they were never paid with any regularity, as attempts to institute a regular dues system were never successful.

Further, respondent's present existence and activity is shown by petitioner's witness Hecht, who was a VALB member until the day he testified in this proceeding and who attended a meeting of respondent as late as May 31, 1954. Horan, primarily because he was in the military service, has not had direct personal contact with the VALB, but was a member and in mail contact with it until February 1954, receiving the *Volunteer for Liberty*, letters, and tickets to sell for VALB fund-raising affairs.

Respondent's continued operation is further shown by various certificates of authority for unincorporated association accounts filed with the Amalgamated Bank of New York, in which it maintains an account. For instance, on June 7, 1951, such a certificate was filed (Pet. Ex. 62),

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[fol. 201] signed by Moe Fishman as Executive Secretary, certifying that the VALB was at that time an incorporated association and empowering any two of the following three persons to withdraw funds from respondent's bank account: Moe Fishman, as Executive Secretary; Irving Fajans and Daniel Groden, as Board Members of respondent. On the 20th of April 1953, after the dissolution of respondent's corporate form, another certificate of authority was filed with this bank (Pet. Ex. 63), signed by Moe Fishman, as Executive Secretary, stating that the VALB was an unincorporated association doing business in New York State. Milton Wolff, as respondent's National Commander, certified that Fishman was competent to execute this authority, which authorized him and Fishman, each individually to withdraw funds from respondent's bank account.*

Further and in addition to the evidence set forth in prior sections of this Report showing respondent's continued operation (see, e.g., pp. 82, 94, 96), the Party in the *Daily Worker* of June 3, 1953, November 2, 1953, and February

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* Wolff concedes under cross-examination that, in 1952 and recently, he has been one of two persons authorized to sign checks for the VALB, but asserts he has done so only a few times, as Moe Fishman, Executive Secretary, generally signs them.

1, 1954, Pet. Exs. 166, 165, and 169, respectively, among other issues, has continued to publicize respondent and its current activities.

Hence, it is readily apparent that the dissolution of respondent's corporate form has had no material effect upon its continued existence and activities. It has continued to maintain the same office, officers, membership, mailing lists, the same official publication (the *Volunteer for Liberty*), and the same bank account; and has represented itself as an unincorporated association doing business. It has continued: to promulgate the same policies; to conduct rallies and fund-raising affairs; to utilize the mails for campaigns to solicit support and to disseminate its literature, including the *Volunteer for Liberty;* and to coordinate activities through its national headquarters with members of its posts in cities outside New York. We find that these activities are consistent with and indicative of a going organization and that they are not compatible with, incident to, or undertaken in pursuance of winding up its corporate affairs. Moreover, respondent, in the face of petitioner's evidence that its corporate form was dissolved and that it has since continued as an active organizational entity, has presented no substantial evidence to the contrary.

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[fol. 202] Accordingly it is found on the entire record that the dissolution of respondent's corporate form in October 1952 did not terminate or substantially alter its status as an active organization within the terms of the Act; that after its corporate form was dissolved, respondent has continued to operate and function in fundamentally the same manner and to substantially the same degree as in preceding years; and that it in fact constitutes an organization within the terms of section 3(2) of the Act.

Respondent also argued on exceptions that an order of registration against it would encompass all survivors of the ALB, as this is the only definable group by which its membership could be ascertained and that it would place a burden on all such persons to determine if they are VALB members. Further, that since the Communist Party members among its membership would be subject to the terms of the Act by virtue of the Board order entered against

the Communist Party,* an order against respondent would primarily affect its non-Communist members.'

These contentions are without merit. Not all ALB veterans are members of respondent, as is illustrated by petitioner's witnesses Gladnick, Harris, Hecht, Herrick, Horan, and Maken, who through expulsion or otherwise have severed their memberships in the organization. As to who are respondent's members, the statement by the United States Court of Appeals for the District of Columbia Circuit, in affirming the Board's order in the *Communist Party* case, 223 F. 2d 531 at 551, that "Membership in an organization is of course a fact, and if one is actually a member he knows it." affords an adequate answer. Concerning the effect of an order of registration against respondent's members, the fact that certain of its members are also Party members, and as such are subject to the order in the *Communist Party* case, is beyond the scope of the Board's consideration in determining whether an organization is properly established to be a Communist front.

Respondent takes a general exception (which it reiterates in specific exceptions to numerous statements throughout

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[fol. 203] the Recommended Decision) to all findings based upon activities within the Party of those respondent's members who are also shown to be Party members, contending that such activities are immaterial and irrelevant unless shown to be directly or indirectly authorized, approved, or directed by it. Respondent does not press this objection in instances where both it and the Party are active concerning the same matter, noting that it is conceivable that the same individual could be representing both it and the Party in such cases.

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* The Board on April 20, 1953, in *Herbert Brownell, Jr., Attorney General of the United States* v. *Communist Party of the United States of America*, Docket No. 51-101, issued its report and order finding the Party to be a Communist-action organization and directing it to register as such. The order was affirmed by the United States Court of Appeals for the District of Columbia Circuit, *sub nom Communist Party of the United States of America* v. *Subversive Activities Control Board*, 223 F. 2d 531. Certiorari was granted on May 31, 1955.

It specifically directs this exception to findings that its members who are also Party members recruited for the Party, taught Marxism-Leninism within the Party, participated in official capacities in Party conventions, on Party committees, and in Party rallies and affairs, supported and participated in drives to advance the *Daily Worker*, were promoted within the Party or for whom employment was obtained by the Party; that its National Commander Wolff and other VALB officials or members reported to the Politburo concerning respondent; and that its Chicago post received directives from the Party, and members and officers thereof attended Party meetings.

As applied herein, in the light of the allegations of section III(1) and subparts of the Petition, section 13(f)(1) of the Act makes necessary in this connection consideration of the extent to which persons who are active in respondent's management, direction, or supervision, are also similarly active in the Party or as representatives of the Party, a Communist foreign government, or the world Communist movement. We know of no way to ascertain if a person active in respondent is also active as a representative of the Party without considering evidence, if any, of his activity in and with the Party. Without more, evidence of such Party activity is clearly relevant and material and the absence of a showing that respondent has authorized its members to be active in the Party, is, in this connection, of little significance.

The Attorney General, however, presents evidence establishing respondent's principal officers to be Party representatives and a substantial portion of its members to be active as Party members and in a number of instances as high Party officials. When viewed in its totality, all such evidence is clearly relevant and material and compels the conclusion that respondent is controlled by the Party, having Communist officers and a substantial number of Party members among its membership; and it is reasonable to conclude that the Party members facilitate the exercise of control of respondent by the Party. Such evidence also is

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[fol. 204] pertinent in considering the purpose of certain of respondent's activities. It should be noted, however, that

the Party activities of respondent's members were not utilized as a basis for finding that respondent aids the Party, except in those instances where additional evidentiary circumstances so warranted. Accordingly, this exception is overruled.

Respondent, as a corollary to this exception, makes a point of the fact that eighty-odd members of the ALB and about seventy VALB members were identified as Party members, out of the hundreds that were in the ALB and presumably eligible for membership in the VALB, and it reiterates that much of the evidence relates to this relatively small number of persons and their relationship with and activities in, or on behalf of, the Party. The net effect is to charge that it is error to find adversely to respondent utilizing such evidence, which respondent portrays as "unauthorized" activities of a small portion of its membership. What this argument overlooks is the inherent nature of the issues involved in this case and the complete lack of record support for this proposition. We are here concerned with established representatives of a Communist-action organization with all that term connotes under this statute who are shown to control respondent. We do not agree that the established Party members in respondent are insubstantial in number. While the record does not disclose the precise size of respondent's membership, it affords guides by which an estimate can be made.

Wolff testifies that there are slightly less than 600 survivors of the ALB today; however, the record is clear that all are not VALB members. Further, Wolff testifies that in one of the most heated and interest-stimulating discussions that respondent ever had, which occurred in 1952 concerning respondent's publication *The Heart of Spain*, about 200 veterans from the New York area (which has the largest concentration) participated and there was considerable correspondence with veterans outside of New York. Based upon the foregoing and other evidence of record, it appears that respondent's total membership numbers considerably less than six hundred. Therefore, the existence of Party representatives in its principal offices and about seventy other Party members or functionaries among its membership over the years cannot be said to be insub-

stantial. Furthermore, respondent, faced with such evidence, presented no witness who refuted specifically the established Party membership status or Party activities of its members and officers; nor was it shown that such persons constituted an unsubstantial minority. There is no credible evidence to support a finding that the activities of its officers and members were unknown to respondent, or

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[fol. 205] in any manner disowned by it; in fact the contrary is shown. Respondent failed to show that such activities are those of a virulent minority acting *ultra vires*.

Respondent's principal objections to evidence received at the hearing, which it presses in its exceptions, and which have not heretofore been treated, pertain to those petitioner's exhibits which comprise copies of official organs of the Party and the Communist International on the grounds that the matters contained therein are irrelevant and immaterial; are not established to represent the official opinion and policies of any organization; do not tend to show domination and control of respondent; consist of Constitutionally protected writings which cannot be used as the basis of a registration order; and relate to matters pre-dating the Act.

This exception is lacking in merit. As shown, petitioner's uncontradicted evidence establishes the official character and competence of the publications received as official organs and establishes that they bespeak the particular organizations' official policies and positions. The activities and policies of the Party and the world Communist movement and of their representatives, and the relationship of respondent therewith are of the very essence of this proceeding and can in no respect be deemed irrelevant or immaterial. Moreover, we find no Constitutional impediment to the consideration as evidence of any documents received herein. In considering, however, the extent to which respondent's policies do not deviate from those of the Party or the world Communist movement, the merits or objective validity of the views and policies expressed were not the subject of inquiry.

Concerning the acceptance of evidence, both testimonial and documentary, which related to matters pre-dating the

Act, we have ruled in the *Communist Party* case, *supra*, that such evidence is clearly pertinent to a determination of present status and the Court of Appeals has specifically affirmed this ruling which we consider to be dispositive of this contention. (See *Communist Party* case, 223 F. 2d 531 at 570.)

Further, it is significant in this connection that respondent makes not attempt to show any change (other than corporate dissolution) in its established status as an organization which since its creation has been dominated and controlled by the Party for Party purposes. Its defense, overborne by petitioner's evidence, is that it was never such an organization.

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[fol. 206] We treat next respondent's position that not being a party to the proceeding before this Board in which the Communist Party was found to be a Communist-action organization, it is not bound by the findings and order of the Board entered therein; that the Board's order in that case cannot be legally conclusive until it has become final within the terms of the Act; and that to hold the Board's prior determination as conclusive in this proceeding would violate the Act, the Administrative Procedure Act, and Constitutional due process.

Concerning this matter, it was ruled at the hearing (Tr. 2827) that if, at the completion of the hearing, the evidence establishes that respondent is substantially dominated and controlled by the Communist Party and is primarily operated for the purpose of giving aid and support to the Communist Party, then the Board's prior finding and determination that the Communist Party is a Communist-action organization will be considered conclusive in this proceeding.

The Recommended Decision, finding the requisite factual basis to be established, and citing the Board's ruling in *Brownell* v. *Labor Youth League*, Docket No. 102-53, decided February 15, 1955, held the Board's finding against the Party to be conclusive and binding. Upon our independent review of the record we conclude that the preponderance of the evidence shows respondent in fact and in law stands in an intimate relationship to the Party, having been created by the Party and since dominated and con-

trolled by it, and operated primarily for the purpose of aiding and supporting the Party and the world Communist movement; and that it is reasonable, in view of this established relationship and a reasonable construction of the Act, that the Board's prior determination in the *Communist Party* case, *supra*, that the Party is a "Communist-action organization" be considered as binding and conclusive in this proceeding.

Concerning the effect of claims of Constitutional privilege under the Fifth Amendment, respondent's principal witness, Wolff, who is, and since 1939 has been, its National Commander, and who appeared voluntarily in this proceeding, declines on this basis to answer many relevant and pertinent questions under cross-examination.* A num-

[fol. 207] ber of these specific inquiries were set forth earlier herein at page 32, *supra*, and as there indicated, the majority of such declinations occurred with respect to questions calculated to elicit an answer which would, in effect, show a relationship between the VALB and the Communist Party, which is the crux of the issue here.

No inference adverse to witness Wolff or respondent is drawn as a result of such claims of privilege, nor are the claims deemed to constitute affirmative evidence against respondent. On the other hand, these refusals to answer questions of vital significance require that Wolff's testimony on direct examination in these specific areas be assayed in the light of the resultant preclusion of full cross-examination thereon.

The signal importance of cross-examination in an adversary proceeding such as this, where it is necessary to assay and consider the evidence of one party against that of the other is manifest. Consequently, those areas of Wolff's direct examination wherein cross-examination was substantially precluded by invocation of Constitutional

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*Constitutional privilege was claimed by Wolff at the following: Tr. 3941; 3953; 3961; 3990; 3991; 3992; 4002; 4003; 4012; 4030; 4033; 4034; 4037; 4038; 4043; 4044; 4045; 4048; 4050; 4053; 4054; 4055; 4056; 4073; 4079; 4084; 4092; 4096; 4098; 4099; 4100; 4102; 4141; 4145; 4150; 4164; 4200; 4201; 4204; 4209; 4214; 4223; 4224; 4231; 4233; 4234; 4248; 4282; 4283; 4284; 4285; 4296; 4304; 4315; 4321.

privilege (namely, those areas which are related to the matters covered by the questions which appear in the record at the pages cited in the footnote) have been accorded no weight. To hold otherwise would have the effect of unjustly enriching respondent at the expense of petitioner.

This same ruling has also been applied to respondent's witness Morgan's testimony in those areas where claims of Constitutional privilege* have substantially precluded full cross-examination.

SUMMARY

The facts established by a preponderance of the evidence, briefly summarized, are as follows:

In 1936, the world Communist movement was and had been for some years organized as the Communist International under the hegemony of the Soviet Union and had as integral, disciplined sections, national Communist parties in countries throughout the world, including the Communist parties of the United States and Spain.

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[fol. 208] The Communist Party of Spain (CPS) at that time was a participant of relatively insignificant stature in the popular front or Republican government. In July 1936, military forces led by Francisco Franco commenced an armed rebellion against the Spanish Republican government which plunged Spain into a civil war which lasted until March of 1939 and resulted in Franco and the Spanish Fascist Party (the Falange) taking control of that nation. As Franco's insurgents included members of the Republican Army, the Republican government was left with a disorganized military force and so the various political parties of the popular front, including the CPS, organized field armies from among their adherents.

From the global viewpoint of international Communism, Spain was highly significant as it was a western European nation in which a Communist Party participated in the government, and because its sphere of influence embraced

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* Morgan claimed Constitutional privilege at the following: Tr. 3260; 3310; 3351; 3354; 3357; 3358; 3366; 3372; 3383; 3384; 3385; 3388; 3395; 3396; 3397; 3398; 3399; 3400; 3401; 3402; 3403.

Latin America, through which it was considered possible to counter the United States' influence there and advance communism.

The war in Spain was considered by the world Communist movement, including its component parties, as but one aspect of an international alignment of forces having its counterparts in struggles involving Communist forces then taking place in China and other parts of the world.

The clearly revealed Communist plan in Spain was, through the united or popular front technique, while raising the cry of unity on behalf of the assailed Republican government, to become the dominant force and, upon the reinstitution of that government, to dominate and control it and ultimately to align Spain in the camp of the Soviet Union. This was the purpose for which the CPUSA, the CPS, the Soviet Union, and others, fought in Spain, and it is that purpose which underlies the continuing Party activity relating to Spain, of which respondent is a part. It is of the essence in the matters here involved; and its recognition as an established fact should not in any way be considered as an approval or condonation, directly or indirectly, of any brand of fascism. That all of this was and is done by the CPUSA here in the name of "democracy," of "Lincoln," and of "Washington" can be laid to a Communist technique of utilizing American tradition for Party purposes.

The Comintern, utilizing an international anti-fascist united front technique through its national parties throughout the world, furnished troops to fight in Spain which were

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[fol. 209] organized into five International Brigades, thus substantially increasing the Communist military component in Spain; and in addition sent war materials and a military mission of Russian personnel. The CPUSA, operating as a part of this international movement, furnished about 3,000 men, the majority of whom were Party members, who fought as part of the 15th International Brigade (herein for convenience referred to as the ALB).

The ALB, as all other International Brigades in Spain, functioned under the domination and control of the Comintern. Its members were subject to, and the recipients of,

Communist discipline for political dissidence; a Political Commissar system organized under the leadership of Comintern agents Andre Marty and Luigi Longo, and dominated by Communists, functioned throughout the International Brigades, including the ALB, for the purpose of maintaining the political reliability of troops from the Communist viewpoint and of dispensing Communist indoctrination; the official organ of the ALB was controlled by Communists and reflected Party policy; reading material furnished ALB troops was predominantly Communist, and other publications and mail were censored as a means of instilling and maintaining Communist ideology and of detecting political dissidence; a secret police operated within the International Brigades, including the ALB, to maintain and enforce Communist discipline and ALB members functioned within this police system; ALB members recruited Americans in Spain to be Soviet agents and were trained by Soviet personnel there and so functioned; there were efforts to recruit for the Communist movement, and some ALB troops joined and participated in the Spanish Communist Party.

The CPS functioned in Spain as part of the international Communist united front, in conjunction with the Soviet Union and the CPUSA, with the objective of advancing the Soviet Union's interest in Spain by ultimately making Spain a Communist-controlled nation. As a result of this tactic, including the aid of the world Communist movement, and in furtherance of the foregoing objective, the CPS gained hundreds of thousands of new adherents and became greatly enhanced in power, influence, and prestige in Spain as well as in the Republican government.

The CPUSA, in accordance with international Communist strategy, regarded the struggle in Spain for communism as a front line activity and its operation in the United States in respect to Spain as the rear line activity. This same schematism was applied to the war in China.

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[fol. 210] The CPUSA in its domestic activity, in furtherance of the same purpose, capitalized upon the antipathy of the American people toward fascist totalitarianism and through its anti-fascist united front tactic involv-

ing the sending of the ALB to Spain, it also gained in stature and influence. As a means of raising and collecting funds for this operation, the Party utilized the Friends of the Abraham Lincoln Brigade (FALB) which raised hundreds of thousands of dollars for this purpose while also functioning as a propaganda outlet for the Party. When it went out of existence around 1940, its functions were taken over by respondent.

Prior to the cessation of open warfare in Spain, ALB veterans began returning to the United States but it was not until the early months of 1939 that the main body of veterans returned, having been withdrawn from Spain pursuant to arrangements made through the League of Nations. Of the approximately 3,000 men who went to Spain, about 1,800 returned. Of these, less than 600 survive and it is a portion of these who constitute respondent's membership.

The CPUSA, as a vehicle for carrying on the Communist strategy with respect to Spain, formed the respondent organization in 1938 prior to the return of most veterans. The Party purpose was to use respondent and the shibboleth of anti-fascism as a facade, an instrument to advance Communist influence in the United States and to aid the world Communist movement with reference to Spain.

Party Politburo representatives supervised respondent's formation; appointed its principal officer; approved its constitution; and aided in its financing. Respondent's initial national convention was held under the domination and control of Party representatives and its first National Commander, a Party functionary, was succeeded at this convention by another Party functionary, Milton Wolff, who has since been its National Commander. The policies adopted at this convention were a continuation of those embodied in the ALB as an integral part of the world-wide Communist united front which respondent actively undertook to implement.

In addition to the predominance of Party representatives in high offices of respondent from its inception to the present, outstanding Party members have also been active members of respondent and vice versa; and through the

years there has been complete knowledgeable rapport between respondent and the Party, including reporting to the Party on respondent.

Within the CPUSA, respondent's members are regarded as cadre material of the finest sort; as men who have suc-

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[fol. 211] cessfully met the supreme tests of devotion and loyalty to it and the world Communist movement; and in recognition of their service in Spain many have been made functionaries and promoted and advanced within the Party to positions of high trust.

Respondent, just as was the ALB in Spain, is subject to Party discipline, and its members, in addition, are subject to the discipline of respondent which, in the same mold as the Party, requires its members, under penalty of being disciplined or expelled, to completely accept and implement its policies.

Throughout the years, the Party has constantly publicized respondent and the views and policies attributed to it, equating VALB with anti-fascism and depicting it as having earned the prerogative to speak out on Spain and fascism. The Party has continuously, in the many ways shown in this Report, aided and supported respondent and thus assured itself of its continued usefulness.

In turn, respondent has consistently adopted, adhered to, and implemented policies and programs of the Party calculated to advance the Party's objectives and to aid the world Communist movement. In so doing, it has utilized the trademark of anti-fascism as the means of fostering and gaining aid and support from among the masses of American people, which ultimately inures to the benefit of the Party and the world Communist movement.

Respondent's complete reversal of its "anti-fascist" line following the signing of the Hitler-Stalin Pact, and its adoption, promulgation, and active implementation of a contrary policy and program is a most graphic illustration of this function. This abdication of its *raison d'etre* exposed "anti-fascism" as a cloak which enshrouds its function as an instrument of the Communist united front technique, subservient to the Party and the world Communist movement. Its adoption, promulgation, and active imple-

mentation of their policies, without deviation, in its own name and in the name of anti-fascism, evidences that respondent is controlled by the Party and that respondent functions primarily to give aid and support to the Party and the world Communist movement, which it is reasonable to conclude would not otherwise be forthcoming in the same degree. Respondent's knowledgeable purpose, it being principally staffed by Party representatives and having a substantial Communist element among its membership, is to further and promote the objectives of the Party and the world Communist movement.

Respondent has taken the position in this proceeding that to be anti-Franco is to be branded as subversive and, as indicated in the body of this report, has attempted to link

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[fol. 212] all Governmental measures against subversion with a pro-Franco policy. It is of no significance in this proceeding that the Government of necessity maintains diplomatic relations with totalitarian regimes, both fascist and Communist. Moreover, it is desirable, in view of respondent's assertions, to state that an intelligent reading of this Report affords no grounds for charging that it seeks to stigmatize anti-fascism. This is not to say, however, that anti-fascist activity may afford a sanctuary from the terms of this Act in which another brand of alien totalitarianism can operate without revealing to the American people its true purposes. This proceeding demonstrates that the Party uses "anti-fascism" as fertile soil for acquiring aid and support for its policies and programs through a purportedly non-Communist facade such as the Veterans of the Abraham Lincoln Brigade.

It is pertinent to state, in view of respondent's contentions, that the findings herein relate to the VALB as an organization and may not reasonably be considered as embracing all veterans of the war in Spain, as some Americans fought there in the ALB on behalf of the Spanish Republic out of motivations completely alien to Communist purposes and many of the surviving veterans are not members of respondent or in any way represented by it.

Upon the overwhelming weight of the evidence in this proceeding, it is concluded that respondent is directed,

dominated, and controlled by the Communist Party of the United States—a Communist-action organization—and that respondent is primarily operated for the purpose of giving aid and support to it and the world Communist movement.

It is found, therefore, that respondent is a Communist-front organization. An appropriate order will be entered.

By the Board.

/s/ THOMAS J. HERBERT, Chairman

/s/ HARRY P. CAIN, Member

/s/ FRANCIS A. CHERRY, Member

/s/ DAVID J. CODDAIRE, Member

/s/ KATHRYN McHALE, Member

Washington, D. C.
December 21, 1955

[fol. 213] APPENDIX

Petitioner's Witnesses

*MILDRED BLAUVELT,** Party member as undercover police operator, April-September 1943, April 1944-November 1951; attended Party's Workers School, New York City, 1943; held Party positions as Club Financial Secretary, Press Director, and Group Captain; a member of New York City Police Department, 1942 to present.

LOUIS FRANCIS BUDENZ, Party member, 1935-1945; member of Party's National Committee, 1936-1940; member of Party's National and New York State Trade Union Commissions, late 1930's; Labor Editor of *Daily Worker,* 1936-1937; Editor of *Midwest Daily Record,* 1937-1940; member of Illinois Party State Committee, 1937-1940; alternate member of National Committee, 1944; Managing Editor of *Daily Worker,* 1940-1945; now assistant professor of economics at Fordham University.

ROBERT GLADNICK, member of Party's Young Communist League (YCL), 1931-1939; YCL Organizer in North Dakota, 1931; attended New York Communist Party's Workers School, 1932; YCL District Organizer in Texas and Oklahoma, 1932-1933; assigned YCL Anti-Militarist Department in California, 1933-1934; attended Communist Party's Workers School in New York City, 1934; YCL Organizer for Army Air Force personnel at Randolph and Kelly Fields, Texas, 1935; assigned to Party work on New York City waterfront, 1935-1936; member of ALB, January-March 1937; assigned to Russian Mission in Spain, March 1937-June 1938; held rank of First Lieutenant in International Brigades; member of Communist Party of Spain, 1938; member of VALB, 1939; Canadian Army, 1940-1945; now a union organizer.

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* Witnesses who, during their membership in the Party or the respondent, supplied information to the Federal Bureau of Investigation or police authorities are designated herein by an asterisk.

*WILLIAM HENRY HARRIS,** Party member, 1938-1948; member of ALB, 1937-1938; Army of the United States, February-May 1943; member of VALB, 1939-1949.

*LEO HECHT,** Party member, 1936-1939; member of Young Communist League, 1934-1936; member of ALB, 1937-1939; member of VALB, 1939-1954; member of Communist Party of Spain, 1938; now an ironworker in New York City.

[fol. 214] *JAMES WOOD HENDERSON,* Chief of Acquisitions Branch of New York City Public Library, called to identify library records pertaining to the respondent; not a member of, or connected with, the Party or the respondent.

WILLIAM HERRICK, member of Young Pioneers of Communist Party, 1926-1930; member of Young Communist League, 1930-1931, 1936-1939; member of ALB, 1937; member of Socorro Rojo, 1937; member of VALB, 1939; now a stenotype reporter and union official.

*EDWARD M. HORAN,** Party member, 1937-1939; member of Young Communist League, 1930, 1932; member of YCL Presidium Committee, District 8 (Illinois), 1932; member of ALB, 1937-1938; honorary member of UGT, Gastronomical Workers Union, 1938; member of Socorro Rojo, 1938; member of Communist Party of Spain, 1938; member of VALB, 1938-1954; Executive Secretary of VALB Chicago Post, December 1939; member of Executive Committee VALB Chicago Post, 1941; Army of the United States, 1942-1945; United States Air Force, 1950 to present.

*STEPHANIE HORVATH,** Party member as undercover police operator, March 1943-1944, November 1944-December 1947; held Party positions as Recording Secretary, Club Executive Committee, Assistant Membership Director, Section Financial Secretary; a member of New York City Police Department, 1942 to present.

*JOHN HUBER,** Party member, 1939-1947; delegate to Party Section convention, 1940; a consultant to United States Immigration and Naturalization Service, 1954.

JOHN LAUTNER, Party member, 1929-1950; graduate, training school for Party functionaries, 1930; Detroit Secretary of Michigan Section of Party's Hungarian National Bureau and Secretary of Party's Control Commission in Michigan (District 7), 1930; Editorial Staff of Canadian Communist Party Hungarian language newspaper and Secretary of Canadian Party National Hungarian Bureau, 1931; Editor of Hungarian daily Communist paper, *Uj Elore,* in Cleveland, Ohio, also District 5 (Ohio) Bureau Secretary of Hungarian National Bureau and Director of Party Training School, Cleveland, 1932; assigned to Party's New York District Language Department, 1932; Section Organizer in New York, District 18, 1933; Party Organizer for State of West Virginia, 1936-1940; attended Party's National Training School, 1940-1941; National Secretary of Party's Hungarian Bureau [fol. 215] and functionary in Language Department of Nationality Groups Commission, 1941; Army of the United States, 1942-1945; member of Party's Nationality Groups Commission and National Secretary of Party's Hungarian National Bureau, 1946-1947; Party Organizer of Building Trades Industrial Section, 1946-1947; head of Party's New York State Review Commission, 1947-1950; member Party's National Review Commission, 1948-1950; during Party membership attended and participated in many National, State, and Sectional Party conventions and meetings of the Party's National Committee and the Politburo; a consultant to the United States Department of Justice, 1954.

MORRIS MAKEN, Party member, 1935-1939; member of ALB, 1937-1938; Editorial Staff of *Volunteer for Liberty,* 1938; member of VALB, 1939-1940; now a union organizer.

S[redacted] T. MALLOY, Assistant Vice-President, Amalgamated Bank in New York City, called to identify bank records pertaining to the respondent, not a member of, or connected with, the Party or the respondent.

HARVEY MARSHALL MATUSOW, Party member, 1947-1951.

HERBERT T. ROMERSTEIN, Party member, 1947-1949; during membership assigned Party mass work in American Youth for Democracy and Young Progressives of America; now a student.

LOUIS SILVERSTEIN, Supervisor, Division of Public Solicitation, Department of Public Welfare, New York City, called to identify records of his Division pertaining to respondent; not a member of, or connected with, the Party or the respondent.

[fol. 216] RESPONDENT'S WITNESSES

JOSE ASENSIO, Army officer of Spanish Monarchy and Republic, 1909-1939; Senior Officer, Colonel Staff of Republican Army, 1936; General in Command of Madrid Front, September 1936; Assistant Under Secretary of War in command of the Army, 1936-1938; Military Attache in the United States for Spanish Republic, February-April 1939; now a translator for an English-Spanish language magazine in New York City.

CRAWFORD MORGAN, member of ALB, 1937-1938; member of VALB, 1939 to present; now employed as an offset printer in New York City.

G. BROMLEY OXNAM, Bishop, Methodist Church, 1936 to present.

EVAN BIDDLE SHIPMAN, member of ALB, 1937-1938; member of VALB, 1939 to present; now racing columnist for two daily newspapers.

MILTON WOLFF, member of ALB, 1937-1939; held various leadership positions in ALB, including Company Commander, Acting Battalion Commander, Staff Officer attached to Brigade Headquarters, and Battalion Commander; Army of the United States, 1942-1945; identified as Young Communist League member in 1930's, member of Communist Party of Spain, 1938, and CPUSA functionary; National Commander of VALB, 1939 to present.

[fol. 217]

BEFORE THE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 108-53

HERBERT BROWNELL, JR., Attorney General of the United States, Petitioner,

v.

VETERANS OF THE ABRAHAM LINCOLN BRIGADE, Respondent.

ORDER OF THE BOARD—December 21, 1955

Having this day issued its Report in which, after a hearing upon a petition filed under subsection (a) of section 13 of the Subversive Activities Control Act of 1950, as amended, the Board finds that the Veterans of the Abraham Lincoln Brigade, respondent, herein, is a Communist-front organization under the provisions of the said Act, it is

Ordered that the Veterans of the Abraham Lincoln Brigade shall, pursuant to the said Act, register as a Communist-front organization with the Attorney General of the United States.

By the Board.

/s/ THOMAS J. HERBERT, Chairman

/s/ HARRY P. CAIN, Member

/s/ FRANCIS A. CHERRY, Member

/s/ DAVID J. CODDAIRE, Member

/s/ KATHRYN MCHALE, Member

(Seal)

Washington, D. C.
December 21, 1955

[fol. 218] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13174

VETERANS OF THE ABRAHAM LINCOLN BRIGADE, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petition for Review of Order of the Subversive Activities Control Board.

OPINION—Decided December 17, 1963

Mr. Leonard B. Boudin, with whom *Mr. David Rein* was on the brief, for petitioner.

Mr. Robert L. Keuch, Attorney, Department of Justice, with whom *Mr. Frank R. Hunter, Jr.,* General Counsel, Subversive Activities Control Board, *Messrs. Kevin T. Maroney* and *George B. Searls* and *Mrs. Lee B. Anderson,* Attorneys, Department of Justice, and *Messrs. Charles F. Dirlam* and *Peter P. Hanagan,* Attorneys, Subversive Activities Control Board, were on the brief, for respondent.

Mr. Edward J. Ennis filed a brief on behalf of American Civil Liberties Union, as *amicus curiae.*

[fol. 219] Before BAZELON, Chief Judge, PRETTYMAN, Senior Circuit Judge, and DANAHER, Circuit Judge.

PRETTYMAN, *Senior Circuit Judge*: This case is another in the series of Communist-front cases which had been pending before the court awaiting the outcome of the *Communist Party* case.[1] The statute[2] and its application

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[1] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1 (1961).

[2] Tit. I, Internal Security Act of 1950, 64 STAT. 987, 989, as amended, 50 U.S.C. § 782(4).

were discussed in No. 12642, *Labor Youth League* v. *Subversive Activities Control Board,* decided April 25, 1963,[3] and in No. 13260, *National Council of American-Soviet Friendship* v. *Subversive Activities Control Board,* decided May 16, 1963.[4]

The petitioner organization[5] is composed of former members of a fighting force called the Abraham Lincoln Brigade, a unit of approximately three thousand men who went in groups from this country to Spain during the late 1930's to fight on the side of the Republican Army, sometimes called the Loyalists, in that country's Civil War. That war took on an international image as a struggle between Fascism and Communism. The outcome is a matter of history. The Subversive Activities Control Board found that the Lincoln Brigade was one of several international brigades, from various countries, organized by the Communist Party pursuant to directive from the Communist International in Moscow, to advance the Soviet cause in Spain. According to the Board, of the three thousand men who went from this country, eighteen hundred returned [fol. 220] and less than six hundred survived at the time of the Board's report. The Board found that many, but not all, of the returning veterans were organized into the petitioner organization, under the direction and control of the Party, and that it has been, and was at the time of the report, a Communist-front organization, being dominated by the Communist Party and rendering substantial aid and support to it.

The organization itself, petitioner herein, admits in its brief that it was organized around the time of the return of the American participants in the Spanish Civil War. It claims that its functions included "the fostering and continuation of the friendships and fellowships formed in Spain and the rehabilitation and resettlement of the veterans who had returned from Spain." It further states:

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[3] —— U.S.App.D.C. ——, 322 F.2d 364.

[4] —— U.S.App.D.C. ——, 322 F.2d 375.

[5] Sometimes referred to in this litigation as VALB or the Brigade.

> "Many of the men who returned were in need of medical care, in some cases of an extended nature involving operations and hospitalization. The petitioner provided this care to its members without charge. All of the returning veterans were given clothes and some money to tide them over until they could obtain employment. The petitioner assisted veterans in obtaining employment, places to live and in the solution of other problems posed by the adjustment to civilian life. The petitioner also engaged in political activity with its main emphasis on the continuation of opposition to the Franco regime in Spain."

Petitioner also claims that activity in recent years has been meager and spasmodic, consisting of social affairs, rehabilitation functions, "occasional statements in opposition to the Franco regime and some activity in support of its members who were indicted under the Smith Act".

The Board hearing was held in late 1954, and its report was issued December 21, 1955. After the Supreme Court had disposed of the *Communist Party* case, *supra*, oral argument was had in this court in October of last year (1962).

[fol. 221] I

The ultimate conclusion of the Board which we are asked to set aside is that this organization is a Communist front and therefore must register with the Attorney General.

Section 3 of the statute defines a Communist-front organization as:

> "[A]ny organization in the United States * * * which (A) is substantially directed, dominated, or controlled by a Communist-action organization, *and* (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement * * *." (Emphasis added.)

Thus the statutory definition has two parts, one relating to the direction or control of the subject organization and

the other relating to its purposes. A Communist front is directed, dominated or controlled by a Communist-action organization (in this case the Communist Party), and its primary purpose is to aid and support the Party. This is the statutory definition, and so this was what the Attorney General undertook to establish before the Board.

In another section of the statute (Sec. 13(f)) the Congress directed the Board as to what it must—"shall"—take into consideration in determining whether an organization is a Communist front. It listed four such subjects, which have come to be called "criteria" in these cases. The intended relationship between the statutory definition and these criteria is not altogether clear. But it is clear that to declare an organization a Communist front the Board must find it to meet the statutory definition. And further it is clear that in the process of reaching that conclusion the Board must "take into consideration the extent to which" the organization has four specified features.

The four statutory criteria are:

> "(1) the extent to which persons who are active in [fol. 222] its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement * * * ; and
>
> "(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement * * * ; and
>
> "(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement * * * ; and
>
> "(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action

organization, Communist foreign government, or the world Communist movement * * * ."

The Board found on the record before it the presence of specific and detailed evidence as to each of these criteria and concluded, on the "overwhelming weight of the evidence", that the Brigade is "directed, dominated, and controlled by the Communist Party of the United States —a Communist-action organization—and * * * is primarily operated for the purpose of giving aid and support to it and the world Communist movement."

II

Before entering upon a review of the Board's findings in this case, we interject here, as we did in the *National Council of American-Soviet Friendship* case, *supra*, a comment upon the importance of the time element in the statutory terms involved. This statute is cast in the present tense. It is not designed to produce historical treatises. It is designed to compel the public registration of organizations which, subsequent to the passage of the Act, operate to aid [fol. 223] the aims of the Communist movement. This time element is not a technicality, or a happenstance, or a matter of semantics. It is a basic concept. The 1930's, '40's and '50's, *i.e.*, the years before, during and after World War II, witnessed three different policy periods in the relationships between the Soviet Union and the United States. We were for a while neutral in the conflicts in Europe; then we were allies with the Communists against the Nazis; and then, in the presence of rapidly developing historical events, the Congress in 1950 declared the Communist movement to be a revolutionary movement designed to establish a Communist totalitarian dictatorship in all countries in the world. The Congress found and declared in that Act that the foreign Communist dictatorship establishes and utilizes in other countries action organizations which are sections of the Communist movement and are controlled and directed by the foreign dictatorship.[6] And it further declared in

[6] 50 U.S.C. § 781(5).

that same Act that "those individuals who knowingly and willfully participate in the world Communist movement • • • in effect repudiate their allegiance to the United States".[7] To expose to public knowledge these organizations and these individuals was the prime purpose of this statute.

Thus it is that in determining whether a certain organization should be required to register the Board must determine its nature in the 1950's or thereafter. Its prior history may of course be valuable evidential material, but the finding must be as of the time of hearing or reasonably close to it—at the earliest as of the time of the passage of the Act or subsequent thereto.

III

Again preliminarily, we note one more feature of the [fol. 224] statute. We noted it in the *National Council* case, *supra*. We note it again. A Communist-front organization must be, as the Government points out in the cases we have thus far considered, directed, dominated and controlled *"by the Communist Party,"* not by mere members of that entity. That this specification is material is demonstrated by a comparison between the definitions of a Communist-front organization and a Communist-infiltrated organization. We have recited the former, *supra*. As to the latter the statute states:

> "The term 'Communist-infiltrated organization' means any organization in the United States • • • which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement • • • ."[8]

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[7] *Id.* § 781(9).

[8] Sec. 7(a), Communist Control Act of 1954, 66 STAT. 777, 50 U.S.C. § 782(4A).

In short, a Communist-front organization is controlled by the Communist Party; a Communist-infiltrated organization is controlled *not* by the Party but by an individual or individuals who render "aid or support" to the Party.

This conclusion is high-lighted by a reading of the first or "control" criterion of consideration specified by the statute as to each of these organizations. As we have noted, in the Communist-front proceedings the Board must consider:

> "(1) the extent to which persons who are active in its [*i.e.*, the organization involved] management, direction, or supervision, • • • are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization [in this case the Party] • • • ."

On the other hand, with reference to Communist-infiltrated organizations, the Board must consider:

> [fol. 225] "(1) to what extent, if any, the effective management of the affairs of such organization is conducted by one or more individuals who are, or within three years have been, (A) members, agents, or representatives of *any* Communist *organization,* • • • or (B) engaged in giving aid or support to any such organization • • • ." (Emphasis supplied.)[9]

We will not construe the meaning of the Communist-infiltrated criterion until there is a case which calls on us to do so. We point to the language of that criterion as an aid in the construction of the meaning of the criterion used in connection with Communist fronts.[10]

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[9] 50 U.S.C. § 792a(e)(1).

[10] We note that, whereas the Communist-front criterion is cast in the present tense, that is, "are active", the Communist-infiltrated provision appears in the alternative, that is, "are, or within three years have been". Moreover in the case of a Communist-infiltrated organization the representative need not be of an action organization but may be of any Communist organization, *i.e.*, not only an action organization but of a front or another infiltrated organization.

A front must be controlled by the Party. This is the first requirement of the statutory definition; *i.e.*, (A) of the defining sentence. How does the Party act? The answer, it seems to us, is found in the first of the criteria specified for Board consideration. That is to say, the Party acts through persons who are "active in [its] management, direction, or supervision, or * * * as [its] representatives". Obviously a representative is one authorized. So the inquiries in this case upon the first half of the statutory definition are (1) whether persons active in the management, direction or supervision of the Brigade in 1950 or thereafter were authorized to do so by the Party; and (2) whether these persons were the dominant or key voices in the management of the Brigade.

[fol. 226] IV

The evidence and the findings in this record[11] contain voluminous data concerning the organization of the Brigade and its participation in the Spanish Civil War, which began in July, 1936, and continued until March, 1939. It is clear that the struggle between the Republican government and the rebel forces was basically between Fascism (led by Franco and the Spanish Fascist Party) and Communism (supporting the Republican government). The Brigade tells us in its brief that the only substantial military supplies received by the Republican government came from the Soviet Union and, to a much less extent, from Mexico. It tells us further that the Communist Party, among others, rallied its members to join the Republican Army; that volunteers throughout the world joined that Army; that the American volunteers became known as the Abraham Lincoln Brigade; and that Communists in the United States played a large part in recruiting the members. There is a dispute as to the control and supervision of these Brigades while in Spain, whether it was by the Comintern or independently by the Spanish government. And there is a dis-

[11] The record contains 4576 pages of testimony, 306 exhibits, and 123 single-spaced, mimeographed pages of Report.

pute as to the number of "Communists" in the Brigade and the number who were killed and how many returned. The Brigade says twelve hundred of the American volunteers returned; the Board says eighteen hundred.

All the foregoing is interesting. It is also important, but only in so far as background material may shed light on later events. It is clear that from among the surviving returnees came the present members of the Brigade. The Brigade was organized in 1939, and in 1940 it was incorporated in New York as a membership corporation. In [fol. 227] addition to the national organization it had local posts in some cities. Two Government witnesses testified that they were present at meetings, one of the Politburo and the other of a Central Committee of the Party, when directives were issued to organize, direct and control the Brigade and reports on its progress were made. One of these witnesses testified, based upon official reports made in his presence at meetings of the Politburo and National Committee of the Party, that the principal objective and major purpose of the Brigade were as an integral part of the Party apparatus. Milton Wolff, the last battalion commander of the group in Spain, was elected National Commander of the Brigade at its first national convention, and he has held that post until the present time. Because of failure to file required reports, the corporate charter under New York law was forfeited. October 15, 1962. The Brigade says its national executive board has not met or functioned in any way since 1949. That position is contradicted in some degree by a letter mailed to Brigade members under date of April 25, 1952, signed "Fraternally yours, for the National Committee of the Veterans of the Abraham Lincoln Brigade," followed by the signatures of Wolff, Fishman, and nine others.

The Board made a finding that "Respondent has operated for the past five years into the present through two principal active officers, Moe Fishman, Executive Secretary, and Milton Wolff, National Commander." It also found that "In 1952, respondent's nine-member Executive Committee included six Party members, namely, Irving Weissman, Steve Nelson, Harold Smith, Vaughn Love, Daniel Groden, and Alvah Bessie."

We have diligently searched the record references given us. Almost startling is the fact that so little of the evidence relates to 1950 or years thereafter. Of the thirteen Government witnesses who had been members of the Party, either bona fide or as undercover agents, all but three left [fol. 228] the Party before 1950.[12] Of these three Blauvelt was expelled in November, 1951, but her testimony related to Steve Nelson in 1946. Matusow has already been discredited as a witness in these cases.[13] Lautner left the Party in 1950. All of these thirteen witnesses testified to events occurring while they were Party members. The evidence as to post-1950 is principally documentary.

The Board repeatedly refers to the officers (Wolff and Fishman) and to the six members of the Executive Committee (whom we have mentioned) as "functionaries" of the Party. In the *National Council* case, *supra,* we quoted the Government witness Clontz's definition of that term. On the present record the witness Lautner defined it. He said that "a Party functionary is a member of the Communist Party who has a specific assignment from the Party. * * * is a dedicated person who subjugates his own personal desires and problems, to that of the discipline of the Party. * * * will go wherever the Party sends him and do whatever the Party demands of him, and completely subjugates himself to Party discipline." The evidence does not show, so far as we can find, that Wolff or Fishman were functionaries within that definition, or that they held any official positions in the Party, or that they were picked by the Party. They were members of the Party, and a witness (Budenz) testified that Wolff made reports concerning the Brigade to the Politburo prior to 1945. Of the six above-named Executive Committee members, Weissman was a Party organizer in West Virginia

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[12] Blauvelt in 1951, Budenz in 1945, Gladnick in 1939, Harris in 1948, Hecht in 1939, Herrick in 1939, Horan in 1939, Horvath in 1947, Huber in 1947, Lautner in 1950, Maken in 1939, Matusow in 1951, and Romerstein in 1949.

[13] See Communist Party of U. S. v. Subversive Act. Con. Bd., 102 U.S. App. D.C. 395, 399, 254 F.2d 314, 318 (1958).

[fol. 229] in 1949. Nelson was variously identified as having been a section organizer for the Party, a member of the National Committee, and as having an office at Party headquarters. Harold Smith had been Earl Browder's bodyguard and secretary and remained loyal to him when he was expelled from the Party. One witness said Vaughn Love was a political commissar in Spain in 1938 and had instructed him to join the Communist Party of Spain. A witness said that Groden had been instrumental in bringing about the expulsion of two friends of his (the witness's) from the Party. The same witness said, "Danny Groden I believe was an organizer." Bessie was an editor on the *New Masses,* and the Party secured for him a position as a writer in Hollywood. Bessie joined in an attack by the Party on Hemingway's book, *For Whom The Bell Tolls.*

We think the reasonable inferences from the evidence are such that it can properly be concluded that a preponderance of that evidence establishes these eight men to have been members of the Party. But, as we have said, we find no direct, specific evidence that Wolff and Fishman, the two found by the Board to have been the "two principal active officers" of the Brigade during the five years prior to the Board's hearing, were in those positions as representatives of the Party. As we have said, we find no evidence that they were selected by the Party. Wolff was elected at a Brigade Convention, and he testified that he personally picked Fishman. The representative capacity, if any, of these two must be inferred from the fact that they made reports to the Politburo concerning the Brigade.

We think it is reasonable to conclude from the evidence we have very briefly summarized that Nelson, Weissman, Smith and Love were Party "functionaries". There is evidence that Nelson was designated by the Politburo as "liaison" man with the Brigade. But the part of these [fol. 230] men in the management or control of the Brigade must be inferred from the fact that they were members of the National Committee. The duties of that Committee are

not shown by direct evidence. But absent contrary evidence it is reasonable to assume that a small "National Committee" had duties relating to management.

V

In this posture of our consideration we turn to the three other criteria. Because it seems to us that, although the language of the first two criteria (one directly and the other indirectly) relate to management and control and the other two relate to objectives and policies, it was not intended that the four criteria be split into two separate parts, one applicable to the first half (clause (A)) of the statutory definition and the other applicable to the second half (clause (B)). The statute itself does not indicate such a dichotomy of the criteria. We think the Board must "take into consideration" all four of these specifications in determining the applicability of the whole of the statutory definition.

By these other three criteria (Sec. 13(f) of the Act) the Board is directed to consider the extent to which (1) the support of the Brigade is derived from the Party, (2) its funds, resources or personnel are used to further the objectives of the Party, and (3) the positions taken by it on policies do not deviate from those of the Party. The record is replete with evidence of a close relationship between the Party and the Brigade, the activities of Brigade members in Party affairs, support of each of these organizations by the other, promotions of Brigade members within the Party, support of the Party by the publication of the Brigade, *Volunteer for Liberty*, and like support of the Brigade by the Party newspaper, *The Daily Worker*, and the similarity of positions taken by the two organizations on many matters of policy—all in the years up to 1950. [fol. 231] But the acute question, as we have indicated, concerns the years immediately prior to the Board hearing (1954), specifically since the passage of the Act (September, 1950). The Brigade says in its brief to us that since the latter date its activities have consisted of social affairs, statements in opposition to the Franco regime, the rehabilitation of Brigade members in need of aid, support of its members indicted under the Smith Act, particularly Nelson

and Weissman, and defense of itself in the present proceeding. The report of the Board does not materially contradict this factual position. It finds, and supports with numerous record references, besides a few unimportant incidents,[14] vigorous and vehement opposition to Fascism and particularly to Franco, outspoken opposition to the Internal Security Act and all similar legislation, vigorous support of its indicted members, particularly Nelson, and efforts to defend itself.

Copies of *Volunteer for Liberty,* the publication of the Brigade, in the record as exhibits, include thirteen issues from September 7, 1951 (Volume 12, No. 8) to June, 1954 (Volume 15, No. 4). These are mimeographed sheets, running from one to six pages per issue, very informal and quite vigorous. They constitute original and documentary indications of the activities of the Brigade. They were written at the time by officers of the Brigade, addressed to the members of the Brigade concerning the activities and interests of the Brigade.

The principal interest reflected by these documents is, as the Brigade says, the defense of Steve Nelson, and to a less extent of Irving Weissman. Numerous appeals for [fol. 232] funds for these purposes were made. The prosecutors, jurors and judges were vigorously assailed. Frame-ups were charged. Next in importance appears the Brigade's antagonism to Franco. The Truman administration was charged with all sorts of misdoing in its relations with Franco. Continuous attacks on the Internal Security Act, Senator McCarran, the Un-American Activities Committee, the Wall Street imperialists, and all war-mongers appear in these issues. The publication demanded cessation of the Korean War. These were clearly the principal aims of the Brigade in the post-1950 years as reflected by its official communications to its members.

All the activities just listed were aims and purposes of the Communist Party. Steve Nelson was indicted un-

[14] Such as a birthday meeting in Los Angeles, a tribute to Stalin, a protest against a visit by a Falangist Dance Group and by the Mayor of Madrid, and the publication of a book on the Spanish Civil War.

der the Smith Act as a member of the Communist Party. The allegations were that he was a member of the Party and that the Party taught the overthrow of the Government by force. These indictments were of vital importance to the Party. The Pennsylvania indictment was based upon the same allegations. It became a cause celebre.[15] The bitter antagonism between the Communist movement and Franco is history. Spain is a mother country to most of Latin America. The military bases sought by the United States in Spain were designed as part of protective measures against Communist aggression. The Internal Security Act was aimed at the Communist movement and its agencies. The Korean War was an action by the United Nations to contain Communist advances.

It is true, as the Brigade argues, that these positions on these subjects were also held by many people who were not even remotely allied with the Communist Party. So the question is: When a person, or an organization, actively presses objectives which are objectives of the [fol. 233] Communist Party, does he or it do so as a matter of independent conviction, or does he do so by reason of substantial direction or control by the Communist Party and for the purpose of giving aid and support to the Party? This is a question of fact, the answer to which is to be derived from the record.

We think the Board was entitled to view these events in the context of, or through the coloration of, the past. The events in 1950-1954 were not factually isolated. The Brigade continued to operate after 1950. It had the same officers and occupied the same offices. It continued to publish its magazine. The character and tone of its declarations upon the subjects with which it dealt were the same as those it had always utilized. So that factually, on this record, the post-1950 activities and policies appear as a continued, although diminished, stream, rather than as a separate, new phase of life. Thus viewed, in the light of all that had gone before, considering the extent to which

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[15] Pennsylvania v. Nelson, 350 U.S. 497 (1956).

the management of the Brigade was dominated by representatives of the Party, and the extent to which it supported the Party and the Party supported it, and its policies conformed to the policies of the Party, we think the Board was justified in concluding that upon the record as a whole a preponderance of the evidence establishes that the Brigade was, in the years immediately prior to the hearing, substantially dominated, directed or controlled by representatives of the Party, and operated primarily to aid and support the Party. A re-reading of our discussion of the evidence will demonstrate the point. We need not repeat that discussion. We add that the language and tone of *Volunteer for Liberty* support that view.

The Brigade says its primary purposes were the perpetuation of battlefield-born comradery and the assistance of veterans in need. If so, *Volunteer for Liberty* does not reflect it for 1950-54. That paper does carry announcements [fol. 234] of mass meetings, a "soiree", and "encampment", a New Year's Eve Ball, and other similar events, but in almost all instances these gatherings were for other purposes, principally for the defense of Steve Nelson and in opposition to Franco and this proceeding. Admission was charged and collections taken up. Impassioned pleas for causes were made.

We are conscious of the fact that this case is important both to the public and to the individuals who are involved. We are also conscious of the tremendous volume of the record of this evidence, the almost numberless facets of fact involved, and the dozens of record references given us. All the findings are under vigorous attack. For these reasons we take an unusual step and invite a petition for reconsideration. If either party, or both parties, feels or feel that we have overlooked evidence relating to post-1950 events or activities, it or they may file, on or before thirty days from the date of our order, a petition referring specifically to such evidence and giving its record references.

VI

The Brigade argues that, although the Supreme Court held Section 7 of the Act (the registration requirement)

to be constitutional[16] when applied to a Communist-action organization, the reasons given are not applicable to a Communist-front organization; and that as to the latter Section 7 is invalid. The argument is that the conclusion of the Court was premised upon the congressional findings concerning the world Communist movement, its purposes, and its methods of operation (Secs. 3(3) and 2(4)); and that there is nothing in this record to support a finding that the Brigade was foreign-controlled and operated or was utilized to bring about the overthrow of the gov- [fol. 235] ernment or the establishment here of a totalitarian dictatorship. But we think the Supreme Court's opinion is not so narrowly based. The purposes of the Act, said the Court, are expressed in Section 2 and the registration section is not "lacking in consonance" with those provisions. Section 2 of the Act, in subparagraph (7), recites that Communist organizations "operate to a substantial extent through organizations commonly known as 'Communist fronts'". So, as a matter of statutory constitutionality, we are of opinion that the conclusions reached by the Court in the cited case apply here. The discussion of the subject by the Court is too long to repeat. A reading of the whole of it will demonstrate its applicability to Communist fronts.

For the purpose of making effective our permission for the filing of a petition for reconsideration, issuance of the mandate of this court will be withheld for thirty days. With this proviso the order of the Board is

Affirmed.

BAZELON, *Chief Judge*, dissenting: In *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board*, —— U.S.App.D.C. ——, —— F.2d —— (1963), decided today, I have explained why I think the statutory definition of a Communist front should be read to include only organizations "primarily operated for

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[16] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 81 *et seq.*

the purpose of giving aid and support to a Communist-action organization" in advancing the sinister objectives of the world Communist movement. Here, as in that case, the Board does not appear to have applied this standard. I do not consider whether the evidence would support a finding of sinister purpose, because in my view the staleness of the record requires us to remand the case to the Board for supplementary findings.

[fol. 236] In *Labor Youth League* v. *Subversive Activities Control Board*, —— U.S.App.D.C. ——, 322 F.2d 364 (1963), we noted that the serious consequences of registration to an organization and its past and present members demand strict adherence to the requirement that proof of its status be timely. There the problem was mootness. Here it is the age of the evidence at the time of the Board's hearings, and the lapse of eight years since the Board made its findings.

The hearings were held in 1954 and much of the evidence dated back to the late 1930's and the early 1940's. As the court points out, our relations with the Soviet Union have shifted radically in the meantime. And the Republican cause in the Spanish Civil War engaged the loyalties of sincere democrats as well as Communists.

Despite the court's warning against reliance on old evidence, it concludes that the Board could view the rather meager evidence relating to the period 1950-1954 "through the coloration of the past." I cannot agree.

As an example of what this court now approves, I refer to the Board's finding that officers or functionaries of the Communist Party controlled the Brigade in 1952. The Board included in this category the Brigade's two officers, Wolff and Fishman, and six of the nine members of its Executive Committee. The court recognizes that the preponderance of the evidence fails to show that either of the two Brigade officers, as well as two of the six Executive Committee members, were officers or functionaries of the Party at any time. This leaves only Nelson, Weisman, Smith and Love. But as to these four of the eleven top officials of the Brigade in 1952, the court ignores the age of the evidence that they were Party functionaries. The most

recent evidence on any of the four concerns Weisman, said to be a Party organizer in 1949, and Nelson, on whom the evidence dates from 1946. The finding on Love is based on [fol. 237] testimony given by Horan, who left the Party in 1939, concerning Love's activities in Spain in 1938. The evidence about Harold Smith goes back to 1946, when Earl Browder was expelled from the Party and Smith, his bodyguard, remained loyal to him. Continued loyalty to a man who had been expelled in 1946 does not support an inference that Smith was a Party functionary in 1952.

The record was stale when the Board made its findings. In the eight years since then there have been turbulent changes in world affairs. Though American-Soviet relations have not changed as radically in this period as before, the views of many who were formerly sympathetic to the Communist cause have undergone profound change, particularly after the brutal suppression of the Hungarian revolt in 1956.

I would remand to the Board for further hearings concerning the activities of the Brigade from the passage of the Act in 1950 to the present.

[fol. 238] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,174—September Term, 1963

VETERANS OF THE ABRAHAM LINCOLN BRIGADE, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

Before: Bazelon, Chief Judge, Prettyman, Senior Circuit Judge, and Danaher, Circuit Judge, in Chambers.

ORDER DENYING PETITION FOR RECONSIDERATION—
February 17, 1964

It appearing that in its opinion in this case, —— U. S. App. D. C. ——, —— F. 2d —— (1963), this court invited a petition for reconsideration, saying:

> "If either party, or both parties, feels or feel that we have overlooked evidence relating to post-1950 events or activities, it or they may file, on or before thirty days from the date of our order, a petition referring specifically to such evidence and giving its record references."

and it further appearing that the petitioner Brigade has filed a petition for reconsideration, but it appearing, upon careful examination, that said petition does not refer to any evidence overlooked by the court in the opinion; and the court having considered the points of fact and of law presented in the petition;

Now, therefore, it is Ordered by the court that the petition is hereby denied.

[fol. 239] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,174—September Term, 1963

VETERANS OF THE ABRAHAM LINCOLN BRIGADE, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petition for Review of Order of the Subversive Activities Control Board.

Before: Bazelon, Chief Judge, Prettyman, Senior Circuit Judge, and Danaher, Circuit Judge.

JUDGMENT—March 2, 1964

This case came on to be heard on the record from the Subversive Activities Control Board, and was argued by counsel; and this court having filed an opinion in this case on December 17, 1963, providing that entry of judgment be withheld for 30 days; and it appearing that this court entered an order on February 17, 1964, denying petitioner's petition for reconsideration; upon consideration whereof, it is

Ordered and Adjudged by this court that the order of the Subversive Activities Control Board on review in this case is hereby affirmed.

Per Senior Circuit Judge Prettyman.

Dated: Mar. 2, 1964.

Separate dissenting opinion by Chief Judge Bazelon was filed December 17, 1963.

[fol. 240] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 241]

SUPREME COURT OF THE UNITED STATES

No. 1068, October Term, 1963

VETERANS OF THE ABRAHAM LINCOLN BRIGADE, Petitioner,

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

ORDER ALLOWING CERTIORARI—June 22, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is placed on the summary calendar. It is set for oral argument immediately following No. 909 which case is also placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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MAY 5 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. 65

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

Supreme Court of the United States

October Term, 1963

No.

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Veterans of the Abraham Lincoln Brigade petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia Circuit (R. 59; Appendix B herein) which affirmed (Chief Judge Bazelon dissenting) an order of the Subversive Activities Control Board (R. 19) entered under Section 13(g)(1) of the Subversive Activities Control Act of 1950, 64 Stat. 1000, 50 U. S. C. § 792(g)(1) that the petitioner register as a Communist-front organization under Section 7 of the Act, 64 Stat. 993, 50 U. S. C. § 786.[1]

---

[1] The Subversive Activities Control Act, as amended, is Title I of the Internal Security Act of 1950, 64 Stat. 987, and is hereafter referred to as the Act. The Subversive Activities Control Board is hereafter called the Board. "Tr." refers to the original transcript of record which has been filed with the Court in addition to the certified record ("R."). "P. Ex." refers to an Exhibit introduced at the Administrative hearing by the Attorney General; "Rep't" to the Board's report.

The Opinion Below

The opinion below (R. 23; Appendix A herein) has not yet been reported.

Jurisdiction

The judgment below was dated and entered on March 2, 1964 (R. 59). Jurisdiction of this Court is conferred by Section 14(a) of the Act, 64 Stat. 1001, 50 U. S. C. § 793, and 28 U. S. C. § 1254.

Questions Presented

1. Whether the organization satisfies the Act's first requirement that it be controlled by a Communist-action organization where, as the Court below found, petitioner's dominant managers were *not* representatives or functionaries of a "Communist-action organization" (*i.e.*, the Communist Party).

2. Whether the organization satisfies the Act's second requirement that it be "primarily operated for the purpose of giving aid and support to a Communist-action organization," where the organization engaged solely in peaceful activities for innocent objectives, including opposition to this very proceeding.

3. Whether the almost exclusive reliance of the Board and the Court below upon the pre-statutory activities of petitioner disregards that court's own strictures, violates the Act, and constitutes an ex post facto law and bill of attainder under Article I, Section 9 of the Constitution and denies due process under the Fifth Amendment thereof.

4. Whether the Board and the court below complied with the statutory mandate to (a) determine "the extent to which" the statutory criteria are established, and (b) make findings upon a preponderance of the evidence.

5. Whether a remand to the Board is required where the court below adopted standards and findings different from those of the Board.

6. Whether the provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face and as applied to petitioner.

7. Whether the reliance by the court below upon a prior determination concerning the Communist Party in a proceeding to which petitioner was not a party is permissible under the Act and Constitution.

Statute Involved

The pertinent provisions of the Act are set forth in Appendix C herein.

Statement of the Case

This case and that of the *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board*, Oct. Term, 1963, No. 909, certiorari granted, April 27, 1964, are the first cases in this Court involving orders to register as Communist-front organizations.

The Act

Section 13 of the Act provides for administrative proceedings before the Board, instituted by petitions of the Attorney General, to determine whether accused organizations shall be ordered to register as "Communist-action" or "Communist-front" organizations.[2] On April 20, 1953,

[2] The Act also authorizes the Board to declare whether organizations are "Communist-infiltrated" organizations. Such organizations are deprived of the benefits of the National Labor Relations Act, but are not required to register. Sec. 13A, added by sec. 10 of the Communist Control Act of 1954, 50 U. S. C. 792a.

the Board ordered the Communist Party of the United States of America to register as a Communist-action organization (R. 5). That order was eventually sustained in *Communist Party* v. *S.A.C.B.*, 367 U. S. 1 (four Justices dissenting).

A Communist-front organization is defined by section 3(4) of the Act as one "which (A) is substantially directed, dominated or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title".[3]

Section 13(f) of the Act (as applied to this case) provides that in determining whether any organization meets this definition, the Board shall take into consideration the "extent to which":

> (1) persons who are active in the "management" of the organization are also "representatives of the Communist Action organization" (i.e. the Communist Party).
>
> (2) the organization's support is derived from the Communist Party.
>
> (3) the organization's resources are used to promote the objectives of the Communist Party.
>
> (4) the organization's positions do not "deviate from those of" the Communist Party.

The substantial sanctions imposed on a Communist-front and its members are set forth in Appendix C, have

[3] The references in section 3(4) to a Communist foreign government and the world Communist movement are not applicable here, since petitioner was found to be controlled by, and primarily operated for the purpose of giving aid to, the Communist Party, "a Communist-action organization" (R. 25).

been well-summarized in the petition in No. 909, and need not be detailed here. They include (a) the organization's registration with the Attorney General and an accounting of its funds and expenses and (b) a denial to its members of federal or labor union employment, American passports and their subjection to denaturalization and deportation proceedings.

The Petitioner

Petitioner is an unincorporated association consisting of Americans who fought in the Abraham Lincoln Brigade during the Spanish Civil War against fascism and Franco.[4] They formed the Veterans in December of 1939 for the purpose of continuing the friendships formed in Spain and of rehabilitating and resettling their colleagues. Petitioner gave them medical care, clothes and some money to tide them over until they could obtain employment. Petitioner assisted veterans in obtaining employment and housing and in the solution of other problems posed by an adjustment to civilian life. Petitioner also engaged in political activity, its main emphasis being on the continuation of opposition to the Franco regime in Spain (R. 25).

Petitioner's affairs have been run since 1949 almost entirely by Fishman, the Executive Secretary, aided by Milton Wolff, elected National Commander in 1939, who serves in a consultative capacity (Rep't 31-2). Fishman has also consulted other veterans who were still interested in petitioner's functions and operations (Tr. 3541-2, 4335-8, 4408). Petitioner has had no election or Executive Board meeting since 1949. Because of its failure to file required reports, its corporate charter was forfeited in 1952 (Pet. Exh. No. 260).

Petitioner's activities since 1949 have been quite meager and spasmodic. They consisted principally of social affairs,

[4] Tr. 481, 493, 582-8, 839, 974, 1048, 1163, 1436-40, 1477, 2149, 2175, 2229, 2430-1, 2585, 3022, 3048, 3203, 3214, 3436, 3511.

rehabilitation functions as described above, occasional statements in opposition to the Franco regime and some activity in support of its members who were indicted under the Smith Act (Tr. 3863-5, 3916-8), and more recently self-defense in this proceeding (Tr. 3866, 4348, 4383; R. 36).

The Administrative Proceeding

On April 22, 1953, the Attorney General instituted administrative proceedings before the Board by filing a petition for an order requiring petitioner to register as a Communist-front organization under Section 7(b) of the Act. On August 28, 1953, an amended petition was filed (R. 2). Hearings before the Board commenced on May 3, 1954 and ended on November 16, 1954 (Rep't p. 2). On December 21, 1955, the Board issued a registration order against petitioner (R. 19) and a report containing its findings and conclusions.

The report is significant because the Board's methods of determining the two statutory elements of control and purpose were so different from those of the Court below.

1. Thus the Board found that Messrs. Wolff and Fishman were petitioner's managers since 1950 (Rep't 30, 31) and that the latest evidence even of Communist Party *membership* was at least eight years prior to that date (Tr. 1945, 2002-16, 2640, 2703, 2753). There is "no direct specific evidence" that either was a Communist Party *representative*, said the Court (R. 34). Nevertheless, the Board held that the control component was proven by disregarding the statutory requirement that the Communist-front officer be a Communist Party functionary and that he have that status simultaneously with his control of the alleged front organization.[5]

---

[5] The Board employs the terms "member", "functionary", and "representative" interchangeably as though the three were equivalent (e.g. Rep't 25, 31, 33). It nowhere defines the terms "functionary" and "representative" and does not state the evidentiary basis for its conclusions. (See e.g. Rep't pp. 23, 25, 31.)

2. The evidence of purpose was almost exclusively of pre-statutory activities. The Board included in this category the activities of mere members although they were not acting for petitioner. It did not make the finding required by 13(f)(3) as to *the extent* to which petitioner's resources were used to promote Communist objectives. By relying upon these pre-statutory objectives, and by disregarding those admittedly innocent, the Board concluded that petitioner's current objectives were within the statutory ambit.

Proceedings in the Court Below

The Court below discarded the Board's entire approach as to time and control:

1. Time

> "This statute is cast in the present tense. It is not designed to produce historical treatises. It is designed to compel the public registration of organizations which, subsequent to the passage of the Act, operate to aid the aims of the Communist movement. This time element is not a technicality, or a happenstance, or a matter of semantics" (R. 27-28).

It noted as "almost startling" that "so little of the evidence" relates to 1950 or years thereafter (R. 32). Presumably, it agreed that the post-Act evidence was insufficient to justify the Board's order. However, the majority below stated that "the Board was entitled to view these events in the context of, or through the coloration of, the past" (R. 38). The Court did not note the Board's total disregard of the post-statutory events and that it had confined its report to the events of 1946 to 1950.

2. Control

The Court, disagreeing with the Board, held that control could be shown only if "in 1950 or thereafter the

dominant or key voices in the management of the Brigade" were "representatives or functionaries of the Party" (R. 30; see also R. 29). It found no evidence that these dominant voices, Wolff and Fishman, were functionaries or representatives of the Communist Party (R. 33).

Instead it turned to a letter of April 25, 1952 promoting an anthology of writings about the Spanish Civil War (R. 32). From this single ambiguous letter, the Court first drew the unsupported conclusion that all of the signatories were members of an executive committee, and then drew the further inference that "it is reasonable to assume that a small 'national committee' had duties relating to management" (R. 35). This, despite a clear record that in the 1950-54 period, there were no national committee or board meetings and that petitioner's affairs were run, as the Board found, entirely by Messrs. Wolff and Fishman (Tr. 3541-2, 4335-8, 4408)[6] (R. 32).

3. Purpose

The Court rejected petitioner's contention that the second half of the statutory definition of a Communist-front must be based on evidence that petitioner advanced the sinister objectives of the Communist Party which are recited in the Act (R. 37). It found no material dispute concerning the post-1950 activities of petitioner: (1) opposition to Fascism and Franco; (2) opposition to the Internal Security Act; (3) support of its members indicted under the Smith Act; and (4) self-defense (R. 36).

While the court recognized that these views "were also held by many people who were not even remotely allied with the Communist Party" (R. 37), it adopted a standard not used by the Board: "[w]hen a person, or an organi-

[6] Of the 11-man so-called National Committee (which had not met since 1949; R. 32), the court had found that only four could be characterized as Communist Party representatives (R. 34), but in no case later than 1949.

zation, actively presses objectives which are objectives of the Communist Party, does he or it do so as a matter of independent conviction, or does he do so by reason of substantial direction or control by the Communist Party and for the purpose of giving aid and support to the Party" (R. 37-38).

The court's approach appears to have been affected by the view of the Spanish Civil War as "a struggle between Fascism and Communism" (R. 24). It similarly treated the petitioner's contemporary objections to Franco as an aspect of "the bitter antagonism between the Communist movement and Franco" (R. 37). Neither the record in this case nor history generally can be said to support these judicial conclusions (R. 50, 52).

Chief Judge Bazelon, dissenting, agreed with petitioner that the statute requires proof that the alleged Communist-front is "advancing the sinister objectives of the world Communist movement" (R. 40) and that "the Board does not appear to have applied this standard" (*Ibid.*).

Further, the Chief Judge stated that "the staleness of the record requires us to remand the case to the Board for supplementary findings" (*Ibid.*). Citing the decision of the court below in *Labor Youth League* v. *Subversive Activities Control Board*, — U. S. App. D. C. —, 322 F. 2d 364 (1963), the Chief Judge pointed to "the age of the evidence at the time of the Board's hearings, and the lapse of eight years since the Board made its findings" (R. 41). He rejected the view "that the Board could view the rather meager evidence relating to the period 1950-1954 'through the coloration of the past'" (R. 41). He suggested a remand to the Board "for further hearings concerning the activities of the Brigade from the passage of the Act in 1950 to the present" (R. 42).

Reasons for Allowing the Writ

This case and the companion one, No. 909, present important statutory and constitutional problems never before this Court. The registration of Communist-front organizations obviously poses problems different from those relating to Communist-action organizations because of the different congressional findings in the statute, the latter's different treatment of the two types of organizations and the special status hitherto given by this Court to the Communist Party; see, *e.g. Gibson* v. *Florida Legislative Committee*, 372 U. S. 539, 547. See also *Chafee, The Registration of "Communist-Front" Organizations in the Mundt-Nixon Bill*, 63 Harv. L. Rev. 1382.

Since even as to the Communist Party there has been a considerable difference of opinion, *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1, the problems raised by petitioner are substantial. Indeed, so much so that the court below, "conscious of the fact that this case is important both to the public and to the individuals who are involved," took "an unusual step and invite[d] a petition for reconsideration" (R. 39).

1. Neither the court below nor the Board (with which it differed) followed either the *control* or the *purpose* parts of the statutory definition or correctly applied the criteria set forth by Congress in Section 13(f). The Board had erroneously found control established where alleged one-time Communist *members* thereafter became managers of petitioner. This erroneous standard was essential to the Board's finding of control since petitioner's two principal officers were not even *members* of the Communist Party after 1941, nine years prior to the passage of the Act.

While the court below enunciated the correct standard, namely, coincidental *representation* of (not membership in) the two organizations, it misapplied the standard. It turned from the only proper test, an analysis of petitioners' man-

agers, Messrs. Fishman and Wolff, to a mere promotional letter, the status and functions of whose signatories is a matter of unsupported inference.

2. Nor was the second element, that of purpose, made out where, as here, the organization engaged exclusively in peaceful activities for innocent objectives. The court described petitioner's activities as "vigorous and vehement opposition to Fascism and particularly to Franco, outspoken opposition to the Internal Security Act and all similar legislation, vigorous support of its indicted members, particularly Nelson, and efforts to defend itself" (R. 36). For statutory and constitutional reasons (*infra*, p. 13), these activities must be deemed outside the statutory ambit, particularly where "this position on these subjects was also held by many people who were not even remotely allied with the Communist Party" (R. 37).

Opposition to Fascism and Franco has been the consistent position of the majority of the American people. Opposition to the Internal Security Act cannot be translated into coverage by the Act. The distinguished opponents of the Act are too many to require citation (see also the Veto Message, H. R. Doc. 708, 81st Cong. 2d Sess.). Nor can the legal defense of one's members prosecuted under sedition laws be proof of such coverage. This defense, viewed critically by the court below, was successful in this and other courts, *Pennsylvania* v. *Nelson*, 350 U. S. 497; *Mesarosh* v. *United States*, 352 U. S. 1; *Wellman* v. *United States*, 253 F. 2d 601.

3. The court, despite its strictures, relied like the Board, upon the pre-1950 activities of petitioner and not the post-statutory ones. See Judge Bazelon's dissenting opinion (R. 40-42).

Reliance upon the past as such rather than as background for an evaluation for contemporaneous events is in direct violation of the congressional objective to require registration of organizations which *are* presently controlled

by the Communist Party to achieve Communist objectives. Any other construction raises serious questions of due process and would turn the statute into a bill of attainder and an ex post facto law, Constitution, Article I, Section 9, clause 3.

4. The court below failed to correct the Board's basic error in substituting "whether" for "extent to which" in each of the four criteria. In the court below, petitioner had pointed out, *e.g.*, that the Board had failed to weigh the so-called Communist Party support against the far more substantial support from Secretary of the Interior Ickes, Vincent Sheehan and others. The Senate debate on this bill deliberately showed the intention of the Congress to consider this measure of extent. Senator Ferguson, one of the drafters of the Senate bill, stated: "It was our considered opinion and conclusion that the words 'whether or not' were an absolute and took no recognition of degree" hence "advisedly adopted the phrase 'the extent to which'," 96 Cong. Rec. 14534.

The court below also disregarded the fact that the Act places a greater burden on the Board than the normal substantial evidence rule applicable to administrative agencies. See, *e.g.*, *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229; *National Labor Relations Board* v. *Columbian E. & S. Company*, 306 U. S. 292, 300. Instead, Section 14 of the Act requires findings to be based upon a preponderance of the evidence. This requirement was avowedly inserted by the proponents to protect an organization against the serious consequences of unfair labelling, 94 Cong. Rec. 6136-7; 96 *Id.* 13765, 14531, 15427. The court's opinion makes no attempt to weigh the evidence on this special statutory scale.

5. The opinion of the Board and the court below are irreconcilable. Thus, *e.g.*, (1) they differ on the meaning of the control component of the statute, *supra*, page 7; (2) the Board found that petitioner's leaders were Party repre-

sentatives, and the court, disagreeing, inferred erroneously that petitioner had an Executive Committee which must have had managerial functions; (3) the court's motivation test for those who promote innocent objectives finds no inspiration in the Board's opinion.

At the very least this case should be remanded to the Board to re-examine the case free from its erroneous findings and in the light of principles enunciated for the first time by the court below, *Securities Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80; *Burlington Truck Lines* v. *United States*, 376 U. S. 156.

6. The court's construction of the statute and its application to petitioner raises serious constitutional questions under the First and Fifth Amendments. The conclusion that the petitioner's post-statutory activities, although lawful and "held by many people who are not even remotely allied with the Communist Party" (R. 37) are within the ambit of the statute, creates an untenable subjective test of motivation.

In *Communist Party* v. *Subversive Activities Control Board, supra*, this Court upheld the constitutionality of the Act requiring the Communist Party to register as a Communist-action organization. This Court recognized that the imposition of the registration requirement on an organization or individual as a precondition to the exercise of the First Amendment rights of speech and assembly impairs those rights (p. 89). See also *Thomas* v. *Collins*, 323 U. S. 516; *Talley* v. *California*, 362 U. S. 60. Applying the balancing doctrine, *cf. National Assoc. for Advancement of Colored People* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; *Shelton* v. *Tucker*, 364 U. S. 479, this Court upheld the registration of an organization found dominated by a foreign power whose objective is the forcible overthrow of the government, 367 U. S. 1, 104-105.

The fair implication of the majority opinion in the *Communist Party* case is that the registration requirement may be constitutionally imposed only upon "foreign dominated organizations which work primarily to advance the objectives of a world movement controlled by the government of a foreign country" and not upon an organization, like the petitioner, whose activities and purposes are quite laudable. This Court's conclusion is supported by the congressional findings in Section 2(7) that Communist-front organizations are utilized "in carrying on the activities" described in Section 2(6) which, in turn, recites the sinister "objectives" of the world Communist movement. (See also H. Rept. No. 2980, 81st Cong. 2d Sess., p. 3.) It is also supported by the Congressional directive that "[n]othing in this chapter * * * shall be construed to authorize * * * censorship or in any way limit or infringe upon freedom of the press or of speech * * *".

Hence, the registration provisions must be construed to apply to organizations of the character described by the majority of this Court in the *Communist Party* case. Nothing in the record suggests that petitioner was utilized to bring about the overthrow of the government or to establish a totalitarian dictatorship subservient to the Soviet Union.

The decision below holds that petitioner's laudatory objectives can constitutionally be regulated because of an inference that it desired to aid the Communist Party. This gives the definition of a Communist-front organization such vagueness as to deny due process; see *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 286.

Petitioner's right to defend its own members against unlawful prosecutions is at least as great as the right upheld by this Court in *National Assoc. for Advancement of Colored People* v. *Button*, 371 U. S. 415, 428-30. Petitioner's activities are protected by the First Amendment and are not subject to governmental control and regulation

even if it had been associated with Communists in these endeavors, *DeJonge* v. *Oregon*, 299 U. S. 353. To require the present registration of petitioner on the ground that its members fought in the Spanish Civil War in 1936-38, which the court below believes to be a conflict between Communism and Fascism, and on the basis of pre-statutory activities, the continuance of which could hardly be presumed in view of the record, the passage of time and the impact of the statute, is to offend due process and to turn the statute into a bill of attainder and an ex post facto law.

These constitutional questions can be resolved in petitioner's favor without a reversal of this Court's decision in the *Communist Party* case. However, post-decision events have shown the need for reconsideration of certain of the principles enunciated in that case. One is this Court's direction of registration even though, in the subsequent enforcement proceeding, registration is barred by the constitutional privilege. *Communist Party of the United States of America* v. *United States of America*, U. S. App. D. C. No. 17583. The second is this Court's refusal to review the sanctions imposed upon an organization's members. This refusal disregards the fact that registration immediately makes those sanctions effective by making it unlawful, *e.g.*, to apply for a passport, and that to seek a judicial determination of constitutionality risks criminal prosecution. *Cf. Rabinowitz* v. *Kennedy*, O. T. 1963, No. 287, 32 U. S. L. W. 4264.

7. Finally, this case presents the same defect as that in No. 909; the Board's prior determination that the Party was a Communist-action organization was made "binding and conclusive" upon the petitioner (Rep't 117). Such a finding has no statutory basis and is constitutionally impermissible since petitioner was not a party to the *Communist Party* case; see *Hansberry* v. *Lee*, 311 U. S. 32; *Kirby* v. *United States*, 174 U. S. 47. Peti-

tioner and its members are thus deprived of liberty and property without the opportunity to contest the factual premises upon which the validity of deprivation depends, *Noto* v. *United States*, 367 U. S. 290; *Renaud* v. *Abbott*, 116 U. S. 277, 278.

Certiorari should be granted and the judgment below reversed.

Respectfully submitted,

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May 4, 1964.

APPENDIX A

Opinion Below

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13174

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,
PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, RESPONDENT

On Petition for Review of Order of the Subversive Activities Control Board

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Decided December 17, 1963

Mr. Leonard B. Boudin, with whom *Mr. David Rein* was on the brief, for petitioner.

Mr. Robert L. Keuch, Attorney, Department of Justice, with whom *Mr. Frank R. Hunter, Jr.*, General Counsel, Subversive Activities Control Board, *Messrs. Kevin T. Maroney* and *George B. Searls* and *Mrs. Lee B. Anderson*, Attorneys, Department of Justice, and *Messrs. Charles F. Dirlam* and *Peter P. Hanagan*, Attorneys, Subversive Activities Control Board, were on the brief, for respondent.

Mr. Edward J. Ennis filed a brief on behalf of American Civil Liberties Union, as *amicus curiae*.

Before BAZELON, Chief Judge, PRETTYMAN, Senior Circuit Judge, and DANAHER, Circuit Judge.

PRETTYMAN, *Senior Circuit Judge*: This case is another in the series of Communist-front cases which had been pending before the court awaiting the outcome of the *Communist Party* case.[1] The statute[2] and its application were discussed in No. 12642, *Labor Youth League* v. *Subversive Activities Control Board*, decided April 25, 1963,[3] and in No. 13260, *National Council of American-Soviet Friendship* v. *Subversive Activities Control Board*, decided May 16, 1963.[4]

The petitioner organization[5] is composed of former members of a fighting force called the Abraham Lincoln Brigade, a unit of approximately three thousand men who went in groups from this country to Spain during the late 1930's to fight on the side of the Republican Army, sometimes called the Loyalists, in that country's Civil War. That war took on an international image as a struggle between Fascism and Communism. The outcome is a matter of history. The Subversive Activities Control Board found that the Lincoln Brigade was one of several international brigades, from various countries, organized by the Communist Party pursuant to directive from the Communist International in Moscow, to advance the Soviet cause in Spain. According to the Board, of the three thousand men who went from this country, eighteen hun-

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[1] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1 (1961).

[2] Tit. I, Internal Security Act of 1950, 64 STAT. 987, 989, as amended, 50 U.S.C. § 782(4).

[3] —— U.S.App.D.C. ——, 322 F.2d 364.

[4] —— U.S.App.D.C. ——, 322 F.2d 375.

[5] Sometimes referred to in this litigation as VALB or the Brigade.

dred returned and less than six hundred survived at the time of the Board's report. The Board found that many, but not all, of the returning veterans were organized into the petitioner organization, under the direction and control of the Party, and that it has been, and was at the time of the report, a Communist-front organization, being dominated by the Communist Party and rendering substantial aid and support to it.

The organization itself, petitioner herein, admits in its brief that it was organized around the time of the return of the American participants in the Spanish Civil War. It claims that its functions included "the fostering and continuation of the friendships and fellowships formed in Spain and the rehabilitation and resettlement of the veterans who had returned from Spain." It further states:

> "Many of the men who returned were in need of medical care, in some cases of an extended nature involving operations and hospitalization. The petitioner provided this care to its members without charge. All of the returning veterans were given clothes and some money to tide them over until they could obtain employment. The petitioner assisted veterans in obtaining employment, places to live and in the solution of other problems posed by the adjustment to civilian life. The petitioner also engaged in political activity with its main emphasis on the continuation of opposition to the Franco regime in Spain."

Petitioner also claims that activity in recent years has been meager and spasmodic, consisting of social affairs, rehabilitation functions, "occasional statements in opposition to the Franco regime and some activity in support of its members who were indicted under the Smith Act".

The Board hearing was held in late 1954, and its report was issued December 21, 1955. After the Supreme Court had disposed of the *Communist Party* case, *supra*, oral argument was had in this court in October of last year (1962).

I

The ultimate conclusion of the Board which we are asked to set aside is that this organization is a Communist front and therefore must register with the Attorney General.

Section 3 of the statute defines a Communist-front organization as:

> "[A]ny organization in the United States • • • which (A) is substantially directed, dominated, or controlled by a Communist-action organization, *and* (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement • • •." (Emphasis added.)

Thus the statutory definition has two parts, one relating to the direction or control of the subject organization and the other relating to its purposes. A Communist front is directed, dominated or controlled by a Communist-action organization (in this case the Communist Party), and its primary purpose is to aid and support the Party. This is the statutory definition, and so this was what the Attorney General undertook to establish before the Board.

In another section of the statute (Sec. 13(f)) the Congress directed the Board as to what it must—"shall"—take into consideration in determining whether an organization is a Communist front. It listed four such subjects, which have come to be called "criteria" in these cases. The intended relationship between the statutory definition and these criteria is not altogether clear. But it is clear that to declare an organization a Communist front the Board must find it to meet the statutory definition. And further it is clear that in the process of reaching that conclusion the Board must "take into consideration the extent to which" the organization has four specified features.

The four statutory criteria are:

"(1) the extent to which persons who are active

in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement * * *; and

"(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement * * *; and

"(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement * * *; and

"(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement * * *."

The Board found on the record before it the presence of specific and detailed evidence as to each of these criteria and concluded, on the "overwhelming weight of the evidence", that the Brigade is "directed, dominated, and controlled by the Communist Party of the United States —a Communist-action organization—and * * * is primarily operated for the purpose of giving aid and support to it and the world Communist movement."

II

Before entering upon a review of the Board's findings in this case, we interject here, as we did in the *National Council of American-Soviet Friendship* case, *supra*, a comment upon the importance of the time element in the statutory terms involved. This statute is cast in the present tense. It is not designed to produce historical treatises. It is designed to compel the public registration of organizations which, subsequent to the passage of the Act,

operate to aid the aims of the Communist movement. This time element is not a technicality, or a happenstance, or a matter of semantics. It is a basic concept. The 1930's, '40's and '50's, *i.e.*, the years before, during and after World War II, witnessed three different policy periods in the relationships between the Soviet Union and the United States. We were for a while neutral in the conflicts in Europe; then we were allies with the Communists against the Nazis; and then, in the presence of rapidly developing historical events, the Congress in 1950 declared the Communist movement to be a revolutionary movement designed to establish a Communist totalitarian dictatorship in all countries in the world. The Congress found and declared in that Act that the foreign Communist dictatorship establishes and utilizes in other countries action organizations which are sections of the Communist movement and are controlled and directed by the foreign dictatorship.[6] And it further declared in that same Act that "those individuals who knowingly and willfully participate in the world Communist movement • • • in effect repudiate their allegiance to the United States".[7] To expose to public knowledge these organizations and these individuals was the prime purpose of this statute.

Thus it is that in determining whether a certain organization should be required to register the Board must determine its nature in the 1950's or thereafter. Its prior history may of course be valuable evidential material, but the finding must be as of the time of hearing or reasonably close to it—at the earliest as of the time of the passage of the Act or subsequent thereto.

III

Again preliminarily, we note one more feature of the

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[6] 50 U.S.C. § 781(5).

[7] *Id.* § 781(9).

statute. We noted it in the *National Council* case, *supra*. We note it again. A Communist-front organization must be, as the Government points out in the cases we have thus far considered, directed, dominated and controlled *"by the Communist Party,"* not by mere members of that entity. That this specification is material is demonstrated by a comparison between the definitions of a Communist-front organization and a Communist-infiltrated organization. We have recited the former, *supra*. As to the latter the statute states:

> "The term 'Communist-infiltrated organization' means any organization in the United States • • • which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement • • •."[8]

In short, a Communist-front organization is controlled by the Communist Party; a Communist-infiltrated organization is controlled *not* by the Party but by an individual or individuals who render "aid or support" to the Party.

This conclusion is high-lighted by a reading of the first or "control" criterion of consideration specified by the statute as to each of these organizations. As we have noted, in the Communist-front proceedings the Board must consider:

> "(1) the extent to which persons who are active in its [*i.e.*, the organization involved] management, direction, or supervision, • • • are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization [in this case the Party] • • •."

On the other hand, with reference to Communist-infiltrated organizations, the Board must consider:

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[8] Sec. 7(a), Communist Control Act of 1954, 66 STAT. 777, 50 U.S.C. § 782(4A).

> "(1) to what extent, if any, the effective management of the affairs of such organization is conducted by one or more individuals who are, or within three years have been, (A) members, agents, or representatives of *any* Communist *organization*, • • • or (B) engaged in giving aid or support to any such organization • • •." (Emphasis supplied.)[9]

We will not construe the meaning of the Communist-infiltrated criterion until there is a case which calls on us to do so. We point to the language of that criterion as an aid in the construction of the meaning of the criterion used in connection with Communist fronts.[10]

A front must be controlled by the Party. This is the first requirement of the statutory definition; *i.e.*, (A) of the defining sentence. How does the Party act? The answer, it seems to us, is found in the first of the criteria specified for Board consideration. That is to say, the Party acts through persons who are "active in [its] management, direction, or supervision, or • • • as [its] representatives". Obviously a representative is one authorized.

So the inquiries in this case upon the first half of the statutory definition are (1) whether persons active in the management, direction or supervision of the Brigade in 1950 or thereafter were authorized to do so by the Party; and (2) whether these persons were the dominant or key voices in the management of the Brigade.

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[9] 50 U.S.C. § 792a(e)(1).

[10] We note that, whereas the Communist-front criterion is cast in the present tense, that is, "are active", the Communist-infiltrated provision appears in the alternative, that is, "are, or within three years have been". Moreover in the case of a Communist-infiltrated organization the representative need not be of an action organization but may be of any Communist organization, *i.e.*, not only an action organization but of a front or another infiltrated organization.

IV

The evidence and the findings in this record[11] contain voluminous data concerning the organization of the Brigade and its participation in the Spanish Civil War, which began in July, 1936, and continued until March, 1939. It is clear that the struggle between the Republican government and the rebel forces was basically between Fascism (led by Franco and the Spanish Fascist Party) and Communism (supporting the Republican government). The Brigade tells us in its brief that the only substantial military supplies received by the Republican government came from the Soviet Union and, to a much less extent, from Mexico. It tells us further that the Communist Party, among others, rallied its members to join the Republican Army; that volunteers throughout the world joined that Army; that the American volunteers became known as the Abraham Lincoln Brigade; and that Communists in the United States played a large part in recruiting the members. There is a dispute as to the control and supervision of these Brigades while in Spain, whether it was by the Comintern or independently by the Spanish government. And there is a dispute as to the number of "Communists" in the Brigade and the number who were killed and how many returned. The Brigade says twelve hundred of the American volunteers returned; the Board says eighteen hundred.

All the foregoing is interesting. It is also important, but only in so far as background material may shed light on later events. It is clear that from among the surviving returnees came the present members of the Brigade. The Brigade was organized in 1939, and in 1940 it was incorporated in New York as a membership corporation.

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[11] The record contains 4576 pages of testimony, 306 exhibits, and 123 single-spaced, mimeographed pages of Report.

In addition to the national organization it had local posts in some cities. Two Government witnesses testified that they were present at meetings, one of the Politburo and the other of a Central Committee of the Party, when directives were issued to organize, direct and control the Brigade and reports on its progress were made. One of these witnesses testified, based upon official reports made in his presence at meetings of the Politburo and National Committee of the Party, that the principal objective and major purpose of the Brigade were as an integral part of the Party apparatus. Milton Wolff, the last battalion commander of the group in Spain, was elected National Commander of the Brigade at its first national convention, and he has held that post until the present time. Because of failure to file required reports, the corporate charter under New York law was forfeited October 15, 1962. The Brigade says its national executive board has not met or functioned in any way since 1949. That position is contradicted in some degree by a letter mailed to Brigade members under date of April 25, 1952, signed "Fraternally yours, for the National Committee of the Veterans of the Abraham Lincoln Brigade," followed by the signatures of Wolff, Fishman, and nine others.

The Board made a finding that "Respondent has operated for the past five years into the present through two principal active officers, Moe Fishman, Executive Secretary, and Milton Wolff, National Commander." It also found that "In 1952, respondent's nine-member Executive Committee included six Party members, namely, Irving Weissman, Steve Nelson, Harold Smith, Vaughn Love, Daniel Groden, and Alvah Bessie."

We have diligently searched the record references given us. Almost startling is the fact that so little of the evidence relates to 1950 or years thereafter. Of the thirteen Government witnesses who had been members of the Party, either bona fide or as undercover agents, all but

three left the Party before 1950.[12] Of these three Blauvelt was expelled in November, 1951, but her testimony related to Steve Nelson in 1946. Matusow has already been discredited as a witness in these cases.[13] Lautner left the Party in 1950. All of these thirteen witnesses testified to events occurring while they were Party members. The evidence as to post-1950 is principally documentary.

The Board repeatedly refers to the officers (Wolff and Fishman) and to the six members of the Executive Committee (whom we have mentioned) as "functionaries" of the Party. In the *National Council* case, *supra*, we quoted the Government witness Clontz's definition of that term. On the present record the witness Lautner defined it. He said that "a Party functionary is a member of the Communist Party who has a specific assignment from the Party. * * * is a dedicated person who subjugates his own personal desires and problems, to that of the discipline of the Party. * * * will go wherever the Party sends him and do whatever the Party demands of him, and completely subjugates himself to Party discipline." The evidence does not show, so far as we can find, that Wolff or Fishman were functionaries within that definition, or that they held any official positions in the Party, or that they were picked by the Party. They were members of the Party, and a witness (Budenz) testified that Wolff made reports concerning the Brigade to the Politburo prior to 1945. Of the six above-named Executive Committee members, Weissman was a Party organizer in West Virginia

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[12] Blauvelt in 1951, Budenz in 1945, Gladnick in 1939, Harris in 1948, Hecht in 1939, Herrick in 1939, Horan in 1939, Horvath in 1947, Huber in 1947, Lautner in 1950, Maken in 1939, Matusow in 1951, and Romerstein in 1949.

[13] See Communist Party of U. S. v. Subversive Act. Con. Bd., 102 U.S. App. D.C. 395, 399, 254 F.2d 314, 318 (1958).

in 1949. Nelson was variously identified as having been a section organizer for the Party, a member of the National Committee, and as having an office at Party headquarters. Harold Smith had been Earl Browder's bodyguard and secretary and remained loyal to him when he was expelled from the Party. One witness said Vaughn Love was a political commissar in Spain in 1938 and had instructed him to join the Communist Party of Spain. A witness said that Groden had been instrumental in bringing about the expulsion of two friends of his (the witness's) from the Party. The same witness said, "Danny Groden I believe was an organizer." Bessie was an editor on the *New Masses,* and the Party secured for him a position as a writer in Hollywood. Bessie joined in an attack by the Party on Hemingway's book, *For Whom The Bell Tolls.*

We think the reasonable inferences from the evidence are such that it can properly be concluded that a preponderance of that evidence establishes these eight men to have been members of the Party. But, as we have said, we find no direct, specific evidence that Wolff and Fishman, the two found by the Board to have been the "two principal active officers" of the Brigade during the five years prior to the Board's hearing, were in those positions as representatives of the Party. As we have said, we find no evidence that they were selected by the Party. Wolff was elected at a Brigade Convention, and he testified that he personally picked Fishman. The representative capacity, if any, of these two must be inferred from the fact that they made reports to the Politburo concerning the Brigade.

We think it is reasonable to conclude from the evidence we have very briefly summarized that Nelson, Weissman, Smith and Love were Party "functionaries". There is evidence that Nelson was designated by the Politburo as "liaison" man with the Brigade. But the part of these

men in the management or control of the Brigade must be inferred from the fact that they were members of the National Committee. The duties of that Committee are not shown by direct evidence. But absent contrary evidence it is reasonable to assume that a small "National Committee" had duties relating to management.

V

In this posture of our consideration we turn to the three other criteria. Because it seems to us that, although the language of the first two criteria (one directly and the other indirectly) relate to management and control and the other two relate to objectives and policies, it was not intended that the four criteria be split into two separate parts, one applicable to the first half (clause (A)) of the statutory definition and the other applicable to the second half (clause (B)). The statute itself does not indicate such a dichotomy of the criteria. We think the Board must "take into consideration" all four of these specifications in determining the applicability of the whole of the statutory definition.

By these other three criteria (Sec. 13(f) of the Act) the Board is directed to consider the extent to which (1) the support of the Brigade is derived from the Party, (2) its funds, resources or personnel are used to further the objectives of the Party, and (3) the positions taken by it on policies do not deviate from those of the Party. The record is replete with evidence of a close relationship between the Party and the Brigade, the activities of Brigade members in Party affairs, support of each of these organizations by the other, promotions of Brigade members within the Party, support of the Party by the publication of the Brigade, *Volunteer for Liberty*, and like support of the Brigade by the Party newspaper, *The Daily Worker*, and the similarity of positions taken by the two organizations on many matters of policy—all in the

years up to 1950. But the acute question, as we have indicated, concerns the years immediately prior to the Board hearing (1954), specifically since the passage of the Act (September, 1950). The Brigade says in its brief to us that since the latter date its activities have consisted of social affairs, statements in opposition to the Franco regime, the rehabilitation of Brigade members in need of aid, support of its members indicted under the Smith Act, particularly Nelson and Weissman, and defense of itself in the present proceeding. The report of the Board does not materially contradict this factual position. It finds, and supports with numerous record references, besides a few unimportant incidents,[14] vigorous and vehement opposition to Fascism and particularly to Franco, outspoken opposition to the Internal Security Act and all similar legislation, vigorous support of its indicted members, particularly Nelson, and efforts to defend itself.

Copies of *Volunteer for Liberty*, the publication of the Brigade, in the record as exhibits, include thirteen issues from September 7, 1951 (Volume 12, No. 8) to June, 1954 (Volume 15, No. 4). These are mimeographed sheets, running from one to six pages per issue, very informal and quite vigorous. They constitute original and documentary indications of the activities of the Brigade. They were written at the time by officers of the Brigade, addressed to the members of the Brigade concerning the activities and interests of the Brigade.

The principal interest reflected by these documents is, as the Brigade says, the defense of Steve Nelson, and to a less extent of Irving Weissman. Numerous appeals for

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[14] Such as a birthday meeting in Los Angeles, a tribute to Stalin, a protest against a visit by a Falangist Dance Group and by the Mayor of Madrid, and the publication of a book on the Spanish Civil War.

funds for these purposes were made. The prosecutors, jurors and judges were vigorously assailed. Frame-ups were charged. Next in importance appears the Brigade's antagonism to Franco. The Truman administration was charged with all sorts of misdoing in its relations with Franco. Continuous attacks on the Internal Security Act, Senator McCarran, the Un-American Activities Committee, the Wall Street imperialists, and all war-mongers appear in these issues. The publication demanded cessation of the Korean War. These were clearly the principal aims of the Brigade in the post-1950 years as reflected by its official communications to its members.

All the activities just listed were aims and purposes of the Communist Party. Steve Nelson was indicted under the Smith Act as a member of the Communist Party. The allegations were that he was a member of the Party and that the Party taught the overthrow of the Government by force. These indictments were of vital importance to the Party. The Pennsylvania indictment was based upon the same allegations. It became a cause celebre.[15] The bitter antagonism between the Communist movement and Franco is history. Spain is a mother country to most of Latin America. The military bases sought by the United States in Spain were designed as part of protective measures against Communist aggression. The Internal Security Act was aimed at the Communist movement and its agencies. The Korean War was an action by the United Nations to contain Communist advances.

It is true, as the Brigade argues, that these positions on these subjects were also held by many people who were not even remotely allied with the Communist Party. So the question is: When a person, or an organization, actively presses objectives which are objectives of the

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[15] Pennsylvania v. Nelson, 350 U.S. 497 (1956).

Communist Party, does he or it do so as a matter of independent conviction, or does he do so by reason of substantial direction or control by the Communist Party and for the purpose of giving aid and support to the Party? This is a question of fact, the answer to which is to be derived from the record.

We think the Board was entitled to view these events in the context of, or through the coloration of, the past. The events in 1950-1954 were not factually isolated. The Brigade continued to operate after 1950. It had the same officers and occupied the same offices. It continued to publish its magazine. The character and tone of its declarations upon the subjects with which it dealt were the same as those it had always utilized. So that factually, on this record, the post-1950 activities and policies appear as a continued, although diminished, stream, rather than as a separate, new phase of life. Thus viewed, in the light of all that had gone before, considering the extent to which the management of the Brigade was dominated by representatives of the Party, and the extent to which it supported the Party and the Party supported it, and its policies conformed to the policies of the Party, we think the Board was justified in concluding that upon the record as a whole a preponderance of the evidence establishes that the Brigade was, in the years immediately prior to the hearing, substantially dominated, directed or controlled by representatives of the Party, and operated primarily to aid and support the Party. A re-reading of our discussion of the evidence will demonstrate the point. We need not repeat that discussion. We add that the language and tone of *Volunteer for Liberty* support that view.

The Brigade says its primary purposes were the perpetuation of battlefield-born comradery and the assistance of veterans in need. If so, *Volunteer for Liberty* does not reflect it for 1950-54. That paper does carry

announcements of mass meetings, a "soiree", and "encampment", a New Year's Eve Ball, and other similar events, but in almost all instances these gatherings were for other purposes, principally for the defense of Steve Nelson and in opposition to Franco and this proceeding. Admission was charged and collections taken up. Impassioned pleas for causes were made.

We are conscious of the fact that this case is important both to the public and to the individuals who are involved. We are also conscious of the tremendous volume of the record of this evidence, the almost numberless facets of fact involved, and the dozens of record references given us. All the findings are under vigorous attack. For these reasons we take an unusual step and invite a petition for reconsideration. If either party, or both parties, feels or feel that we have overlooked evidence relating to post-1950 events or activities, it or they may file, on or before thirty days from the date of our order, a petition referring specifically to such evidence and giving its record references.

VI

The Brigade argues that, although the Supreme Court held Section 7 of the Act (the registration requirement) to be constitutional[16] when applied to a Communist-action organization, the reasons given are not applicable to a Communist-front organization; and that as to the latter Section 7 is invalid. The argument is that the conclusion of the Court was premised upon the congressional findings concerning the world Communist movement, its purposes, and its methods of operation (Secs. 3(3) and 2(4)); and that there is nothing in this record to support a finding that the Brigade was foreign-controlled and operated or was utilized to bring about the overthrow of the gov-

[16] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 81 *et seq.*

ernment or the establishment here of a totalitarian dictatorship. But we think the Supreme Court's opinion is not so narrowly based. The purposes of the Act, said the Court, are expressed in Section 2 and the registration section is not "lacking in consonance" with those provisions. Section 2 of the Act, in subparagraph (7), recites that Communist organizations "operate to a substantial extent through organizations commonly known as 'Communist fronts' ". So, as a matter of statutory constitutionality, we are of opinion that the conclusions reached by the Court in the cited case apply here. The discussion of the subject by the Court is too long to repeat. A reading of the whole of it will demonstrate its applicability to Communist fronts.

For the purpose of making effective our permission for the filing of a petition for reconsideration, issuance of the mandate of this court will be withheld for thirty days. With this proviso the order of the Board is

Affirmed.

BAZELON, *Chief Judge,* dissenting: In *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board,* —— U.S.App.D.C. ——, ——.F.2d —— (1963), decided today, I have explained why I think the statutory definition of a Communist front should be read to include only organizations "primarily operated for the purpose of giving aid and support to a Communist-action organization" in advancing the sinister objectives of the world Communist movement. Here, as in that case, the Board does not appear to have applied this standard. I do not consider whether the evidence would support a finding of sinister purpose, because in my view the staleness of the record requires us to remand the case to the Board for supplementary findings.

In *Labor Youth League* v. *Subversive Activities Control Board*, —— U.S.App.D.C. ——, 322 F.2d 364 (1963), we noted that the serious consequences of registration to an organization and its past and present members demand strict adherence to the requirement that proof of its status be timely. There the problem was mootness. Here it is the age of the evidence at the time of the Board's hearings, and the lapse of eight years since the Board made its findings.

The hearings were held in 1954 and much of the evidence dated back to the late 1930's and the early 1940's. As the court points out, our relations with the Soviet Union have shifted radically in the meantime. And the Republican cause in the Spanish Civil War engaged the loyalties of sincere democrats as well as Communists.

Despite the court's warning against reliance on old evidence, it concludes that the Board could view the rather meager evidence relating to the period 1950-1954 "through the coloration of the past." I cannot agree.

As an example of what this court now approves, I refer to the Board's finding that officers or functionaries of the Communist Party controlled the Brigade in 1952. The Board included in this category the Brigade's two officers, Wolff and Fishman, and six of the nine members of its Executive Committee. The court recognizes that the preponderance of the evidence fails to show that either of the two Brigade officers, as well as two of the six Executive Committee members, were officers or functionaries of the Party at any time. This leaves only Nelson, Weisman, Smith and Love. But as to these four of the eleven top officials of the Brigade in 1952, the court ignores the age of the evidence that they were Party functionaries. The most recent evidence on any of the four concerns Weisman, said to be a Party organizer in 1949, and Nelson, on whom the evidence dates from 1946. The finding on Love is based on testimony given by Horan,

who left the Party in 1939, concerning Love's activities in Spain in 1938. The evidence about Harold Smith goes back to 1946, when Earl Browder was expelled from the Party and Smith, his bodyguard, remained loyal to him. Continued loyalty to a man who had been expelled in 1946 does not support an inference that Smith was a Party functionary in 1952.

The record was stale when the Board made its findings. In the eight years since then there have been turbulent changes in world affairs. Though American-Soviet relations have not changed as radically in this period as before, the views of many who were formerly sympathetic to the Communist cause have undergone profound change, particularly after the brutal suppression of the Hungarian revolt in 1956.

I would remand to the Board for further hearings concerning the activities of the Brigade from the passage of the Act in 1950 to the present.

APPENDIX B

The Judgment Below

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1963

No. 13,174

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,
Respondent.

On Petition for Review of Order of the Subversive Activities Control Board.

Before:
BAZELON, *Chief Judge*, PRETTYMAN, *Senior Circuit Judge* and DANAHER, *Circuit Judge*.

JUDGMENT

This case came on to be heard on the record from the Subversive Activities Control Board, and was argued by counsel; and this court having filed an opinion in this case on December 17, 1963, providing that entry of judgment be withheld for 30 days; and it appearing that this court entered an order on February 17, 1964, denying petitioner's petition for reconsideration; upon consideration whereof, it is

ORDERED AND ADJUDGED by this court that the order of the Subversive Activities Control Board on review in this case is hereby affirmed.

PRETTYMAN,
Per Senior Circuit Judge.

Dated: Mar 2—1964

Separate dissenting opinion by Chief Judge Bazelon was filed December 17, 1963.

APPENDIX C

Statute Involved

Pertinent provisions of the Subversive Activities Control Act of 1950 (which is Title I of the Internal Security Act of 1950), as amended, 64 Stat. 987, 50 U.S.C. 781, et seq., are as follows. (The Act's section numbers are followed by the appropriate section numbers of 50 U.S.C. in brackets.)

Sec. 1(b) [798]. Preservation of certain rights.

Nothing in this chapter * * * shall be construed to authorize, require, or establish military or civilian censorship or in any way to limit or infringe upon freedom of the press or of speech as guaranteed by the Constitution of the United States and no regulation shall be promulgated under said subchapter and sections having that effect. Sept. 23, 1950, Title I, § 1(b), 64 Stat. 787.

Sec. 2 [781]. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that—

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative

form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorshiip of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of the world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic

processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6) of this section, such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts," which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of Communist members, representatives, and agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement.

(9) In the United States those individuals who knowingly and wilfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

(10) In pursuance of Communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above, already caused the es-

tablishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The agents of Communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

(12) The Communist network in the United States is inspired and controlled in large part by foreign agents who are sent into the United States ostensibly as attaches of foreign legations, affiliates of international organizations, members of trading commissions, and in similar capacities, but who use their diplomatic or semi-diplomatic status as a shield behind which to engage in activities prejudicial to the public security.

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organ-

izations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

Sec. 3 [782]. For the purposes of this title—

* * * * *

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist-action organization" means—

(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; and

(b) any section, branch, fraction, or cell of any organization defined in subparagraph (a) of this paragraph

which has not complied with the registration requirements of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

* * * * *

Sec. 5 [784]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title, is registered or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful—

(1) For any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(A) in seeking, accepting, or holding any non-elective office or employment under the United States, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) to hold any non-elective office or employment under the United States; or

(C) in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(D) if such organization is a Communist-action organization, to engage in any employment in any defense facility; or

(E) to hold office or employment with any labor organization, as that term is defined in section 2(5) of the National Labor Relations Act, as amended (29 U.S.C. 152), or to represent any employer in any matter or proceeding arising or pending under the Act.

(2) For any officer or employee of the United States or of any defense facility, with knowledge or notice that such organization is so registered or that such order has become final—

(A) to contribute funds or services to such organization;

* * * * *

(b) The Secretary of Defense is authorized and directed to designate and proclaim, and from time to time revise, a list of facilities, as defined in paragraph (7) of section 3 of this title, with respect to the operation of which he finds and determines that the security of the United States requires the application of the provisions of subsection (a) of this section. The Secretary shall promptly notify the management of any facility so listed; whereupon such management shall immediately post conspicuously, and thereafter while so listed keep posted, notice of such designation in such form and in such place or places as to give reasonable notice thereof to all employees of, and to all applicants for employment in, such facility. Such posting shall be sufficient to give notice of such designation to any person subject thereto or affected thereby . . .

Sec. 6 [785]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title is registered, or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful for any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or

(2) to use or attempt to use any such passport.

* * * * *

Sec. [786].

* * * * *

(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

* * * * *

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

(1) The name of the organization and the address of its principal office.

(2) The name and the last-known address of each individual who is at the time of filing of such registration statement, and of each individual who was at any time during the period of twelve full calendar months next preceding the filing of such statement, an officer of the organization, with the designation or title of the office so held, and with a brief statement of the duties and functions of such individual as such officer.

(3) An accounting, in such form and detail as the Attorney General shall by regulations prescribe, of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full calendar months next preceding the filing of such statement.

* * * * *

(5) In the case of any officer or member whose name is required to be shown in such statement, and who uses or has used or who is or has been known by more than one name, each name which such officer or member uses or has used or by which he is known or has been known.

(6) A listing, in such form and detail as the Attorney General shall by regulation prescribe, of all printing presses and machines including but not limited to rotary presses, flatbed cylinder presses, platen presses, lithographs, offsets, photo-offsets, mimeograph machines, multigraph machines, multilith machines, duplicating machines, ditto machines, linotype machines, intertype machines, monotype machines, and all other types of printing presses, typesetting machines or any mechanical devices used or intended to be used, or capable of being used to produce or publish printed matter or material, which are in the possession, custody, ownership, or control of the Communist-action or Communist-front organization or its officers, members, affiliates, associates, group, or groups in which the Communist-action or Communist-front organization, its officers or members have an interest.

(e) It shall be the duty of each organization registered under this section to file with the Attorney General on or before February 1 of the year following the year in which it registers, and on or before February 1 of each succeeding year, an annual report, prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the same information which by subsection (d) is required to be included in a registration statement, except that the information required with respect to the twelve-month period referred to in paragraphs (2), (3), or (4) of such subsection shall, in such annual report, be given with respect to the calendar year preceding the February 1 on or before which such annual report must be filed.

(f) (1) It shall be the duty of each organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records and accounts of moneys received and expended (including the sources from which received and purposes for which expended) by such organization.

* * * * *

Sec. 9 [788]. (a) The Attorney General shall keep and maintain separately in the Department of Justice—

* * * * *

(2) a "Register of Communist-Front Organizations", which shall include (A) the names and addresses of all Communist-front organizations registered under section 7, and (B) the registration statements and annual reports filed by such organizations thereunder.

(b) Such registers shall be kept and maintained in such manner as to be open for public inspection . . .

* * * * *

Sec. 10 [789]. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or determining that it is a Communist-infiltrated organization, or for any person acting for or on behalf of any such organization—

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of interstate or foreign commerce, any publication which is intended to be, or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations

prescribed by the Attorney General, with the name or the organization appearing in lieu of the blank: "Disseminated by ....., a Communist organization"; or

(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by ....., a Communist organization."

Sec. 11 [790]. (a) Notwithstanding any other provisions of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

(b) No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

* * * * *

Sec. 13 [792]. (a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this title is in fact required to register under such section, he shall file with the Board and serve upon such organization or individual a petition for an order requiring such

organization or individual to register pursuant to such subsection or section, as the case may be. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

* * * * *

(f) In determining whether any organization is a "Communist-front organization", the Board shall take into consideration—

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

(1) that an organization is a Communist-action organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order requiring such organization to register as such under section 7 of this title; . . .

• • • • •

Sec. 14 [793]: (a) The party aggrieved by any order entered by the Board under subsections (g), (h), (i), or (j) of section 13, or subsection (f) of section 13A, may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides. The findings of the Board as to the facts, if supported by the preponderance of the evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence shall be conclusive, and its

recommendations, if any, with respect to action in the matter under consideration. . . .

* * * * *

Sec. 15 [784] (a) If there is in effect with respect to any organization or individual a final order of the Board requiring registration under section 7 or section 8 of this title—

(1) such organization shall, upon conviction of failure to register, to file any registration statement or annual report, or to keep records as required by section 7, be punished for each such offense by a fine of not more than $10,000, and

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

(b) Any individual who, in a registration statement or annual report filed under section 7 or section 8, willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall upon conviction thereof be punished for each such offense by a fine of not more than $10,000, or by imprisonment for not more than five years, or by both such fine and imprisonment. For the purposes of this subsection—

(1) each false statement wilfully made, and each willful omission to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall constitute a separate offense; and

(2) each listing of the name or address of any one individual shall be deemed to be a separate statement.

(c) Any organization which violates any provision of section 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000. Any individual who violates any provision of sections 5, 6, or 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000 or by imprisonment for not more than five years, or by both such fine and imprisonment.

Sec. 16 [795]. Nothing in this title shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, by the Board under this title.

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1068

VETERANS OF THE ABRAHAM LINCOLN BRIGADE, PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The Subversive Activities Control Act provides for the registration of any "Communist-front organization" which is defined (Section 3(4)) as an organization "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." The Attorney General began this proceeding by filing a petition with the Subversive Activities Control Board for an order requiring the petitioner, the Veterans of the Abraham Lincoln Brigade, to register as a Communist-front organization. On De-

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ember 21, 1955, the Board issued a Report and Order determining petitioner to be a Communist-front organization and ordering it to register. The Board's ultimate finding of fact was:

> Upon the overwhelming weight of the evidence in this proceeding, it is concluded that [petitioner] is directed, dominated, and controlled by the Communist Party of the United States—a Communist action organization—and that [petitioner] is primarily operated for the purpose of giving aid and support to it and the world Communist movement.

On review, the Court of Appeals for the District of Columbia Circuit affirmed the Board's order (Pet. App. A, pp. 1–20).

In its petition for a writ of certiorari, petitioner raises the following issues:

First, whether the court of appeals correctly found that the evidence before the Board was sufficient to establish that petitioner was controlled by the Communist Party and was primarily operated in order to give aid and support to it.

Second, whether the aid component of Section 3(4) is satisfied by evidence that petitioner aids and supports the Communist Party by supporting causes which are not only supported by the Communist Party, but also by other non-Communist organizations.

Third, whether the Board's reliance in part on evidence concerning petitioner's activities prior to the passage of the Act violated the bill of attainder or *ex post facto* clauses of the Constitution.

Fourth, whether the provisions of the Subversive Activities Control Act of 1950 providing for the registration of "Communist-front" organizations are, as applied to the facts of this case, in violation of the First Amendment or the due process clause of the Fifth Amendment.

Fifth, whether the Board violated the due process clause or the Act by refusing to allow petitioners to relitigate whether the Communist Party was a Communist-action organization.

Respondent believes that the decision of the court of appeals was correct in rejecting petitioner's attack on the Board's order. The issues in this case, however, are the same as, or analogous to, the issues involved in *American Committee for the Protection of the Foreign Born* v. *Subversive Activities Control Board*, No. 909, this Term. Since the Court granted certiorari in that case, we do not oppose the granting of the writ of certiorari here.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JUNE 1964.

U.S. GOVERNMENT PRINTING OFFICE: 1964

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Supreme Court of the United States

October Term, 1964

No. 65

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,

Petitioner,

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

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Supreme Court of the United States

October Term, 1964

No. 65

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,
Petitioner,

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

The Opinion Below

The opinion below (R. 215-232)[1] is reported in 331 F. 2d 64.

Jurisdiction

The judgment below was dated and entered on March 2, 1964 (R. 234). The petition for certiorari was filed on May 5, 1964 and was granted on June 22, 1964 (R. 235). The court has jurisdiction under Section 14(a) of the

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[1] "R." refers to the printed record. "Tr." refers to the original transcript, which has been filed with the court pursuant to Rule 21(3): "P. Ex." refers to an exhibit introduced in the administrative proceeding by the Attorney General, there the petitioner. "R. Ex." refers to an exhibit introduced by the present petitioner, the respondent in the administrative proceeding.

Subversive Activities Control Act of 1950, as amended,[2] 64 Stat. 1001, 68 Stat. 780, 72 Stat. 950, 50 U. S. C. 793, and 28 U. S. C. 1254.

Statute Involved

Pertinent provisions of the Act are set forth in the Appendix to this brief.

Questions Presented

1. Whether an organization satisfies the Act's first requirement that it be controlled by a Communist-action organization where, as the court below found, petitioner's dominant managers were *not* representatives or functionaries of a "Communist-action organization" (*i.e.*, the Communist Party).

2. Whether an organization satisfies the Act's second requirement that it be "primarily operated for the purpose of giving aid and support to a Communist-action organization" where the organization engaged solely in public statements and peaceful activities for innocent objectives.

3. Whether the almost exclusive reliance of the Board and the court below upon the pre-statutory activities of petitioner disregards that court's own strictures, violates the Act, and constitutes an *ex post facto* law and bill of attainder under Article I, Section 9 of the Constitution, and denies due process under the Fifth Amendment thereof.

4. Whether the Board and the court below complied with the statutory mandate to (a) determine "the extent

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[2] The Subversive Activities Control Act is Title I of the Internal Security Act of 1950, 64 Stat. 987, and as amended is hereafter referred to as the Act. The Subversive Activities Control Board, the respondent herein, is hereafter called the Board.

to which" the statutory criteria are established, and (b) make findings upon a "preponderance of the evidence."

5. Whether reversal and remand to the court below or the Board is required where the court below failed to review the Board's standards and findings and adopted substantially different ones.

6. Whether the provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face and as applied to petitioner.

7. Whether the reliance by the court below upon a prior determination concerning the Communist Party in a proceeding to which petitioner was not a party is permissible under the Act and Constitution.

Statement of the Case

The decision of the court below (R. 215-232), Chief Judge Bazelon dissenting, affirmed an order of the Board (R. 214) that the petitioner register as a Communist-front organization pursuant to the Act.

The Act

Section 13 of the Act provides for administrative proceedings before the Board, instituted by petitions of the Attorney General, to determine whether accused organizations shall be ordered to register as "Communist-action" or "Communist-front" organizations.[3] On April 20, 1953, the Board ordered the Communist Party of the United States of America to register as a Communist-action organization (R. 201). That order was eventually sus-

[3] The Act also authorizes the Board to declare whether organizations are "Communist-infiltrated" organizations. Such organizations are deprived of the benefits of the National Labor Relations Act, but are not required to register. Sec. 13A, added by Sec. 10 of the Communist Control Act of 1954, 50 U. S. C. 792a.

tained, four Justices dissenting, in *Communist Party* v. *S. A. C. B.*, 367 U. S. 1.

A Communist-front organization is defined by Section 3(4) of the Act as one "which (A) is substantially directed, dominated, or controlled by a Communist-action organization and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title."[4]

Section 13(f) of the Act, as applied to this case, requires that in determining whether any organization meets this definition, the Board shall take into consideration the "extent to which" (1) persons who are active in the "management" of the organization are also "representatives of any Communist-action organization" (*i.e.*, the Communist Party); (2) the organization's support is derived from the Communist Party; (3) the organization's resources are used to promote the objectives of the Communist Party; and (4) the organization's positions do not "deviate from those of" the Communist Party. Board findings must be supported by a preponderance of the evidence (Section 14(a)).

The Petitioner

Petitioner is an unincorporated association consisting of Americans who fought in the Abraham Lincoln Brigade during the Spanish Civil War against Fascism and Franco.[5] Of the approximately 3,000 American youths of diverse

[4] The references in Section 3(4) to a Communist foreign government and the world Communist movement are not applicable here, since the petitioner was found to be controlled by, and primarily operated for the purpose of giving aid to the Communist Party, "a Communist-action organization" (R. 209).

[5] Tr. 481, 493, 582-8, 839, 974, 1048, 1163, 1436-40, 1477, 2149, 2175, 2229, 2430-1, 2585, 3022, 3048, 3203, 3214, 3436, 3511.

political views who fought in support of democracy and the Spanish Republican Government, less than half survived (P. Ex. 50, R. Ex. 44). Petitioner was formed in December of 1939 for the purpose of continuing the friendships formed in Spain and of rehabilitating and resettling the returning veterans. Petitioner gave its members medical care, clothes and some money to tide them over until they could obtain employment. Petitioner assisted veterans in obtaining employment and housing and in the solution of other problems posed by an adjustment to civilian life. Petitioner also engaged in political activity, its main emphasis being in opposition to the Franco regime in Spain (R. 100, 163, 217).

Petitioner's affairs have been run since 1950 almost entirely by Moe Fishman, the Executive Secretary, aided by Milton Wolff, elected National Commander in 1939, who served in a consultative capacity (R. 107). Fishman has also consulted other veterans who were still interested in petitioner's functions and operations (Tr. 3541-2, 4335-8, 4408). Petitioner's national Executive Board has not met or functioned since 1949 (R. 223). Because of its failure to file required reports, petitioner's corporate charter was forfeited in 1952 (P. Ex. No. 260).

Petitioner's activities since 1950 have consisted principally of social affairs, rehabilitation functions noted above, statements in opposition to the Franco regime, support of its members who were indicted under the Smith Act (Tr. 3863-5, 3916-8), and more recently, self-defense in this proceeding (Tr. 3866, 4348, 4383; R. 163).

The Proceeding

On April 22, 1953, the Attorney General petitioned the Board for an order requiring petitioner herein to register as a Communist-front organization under Section 7(b) of the Act. Following an amended petition (R. 2), hear-

ings before the Board commenced on May 3, 1954 and ended on November 16, 1954 (R. 76). On December 21, 1955, 13 months after the close of the record and 19 months after hearings began, the Board issued a registration order against petitioner (R. 214) and a report containing its findings and conclusions (R. 74, 209).

The Board correctly found that Messrs. Wolff and Fishman were petitioner's managers since 1950 (R. 107), and that there was no evidence of their Communist Party membership for at least eight years prior to that date (Tr. 1945, 2002-2006, 2643, 2703, 2753).

The Board's discussion of petitioner's activities was almost exclusively limited to activities antedating passage of the Act by many years. The Board attributed to petitioner the activities of mere members although they were not acting for petitioner (R. 169-170). It did not make the finding required by Section 13(f)(3) as *to the extent* to which petitioner's resources were used to promote Communist objectives. Its conclusion as to petitioner's purpose was therefore based upon a consideration of some of petitioner's pre-statutory objectives and by a total disregard of petitioner's innocuous objectives.

The Board offered no evidence to establish that the Communist Party was a Communist-action organization. The Board held that petitioner was bound in this respect by the Board's determination in the proceeding against the Party, to which petitioner was not a party (R. 197-199).

The court below made no substantial review of the Board's rulings on evidence, its use of criteria in evaluating the evidence, or its conclusions. The court correctly stated that the first half of the statutory definition of a Communist front could only be satisfied by a finding that in 1950 or thereafter the "dominant or key voices in the management of the Brigade" were representatives or functionaries of the Party (R. 222). In disregard of the Board's

indifference to the passage of time, the court below emphasized "the importance of the time element in the statutory terms involved" (R. 219), stating that "this statute is cast in the present tense. It is not designed to produce historical treatises. It is designed to compel the public registration of organizations which, subsequent to the passage of the Act, operate to aid the aims of the Communist movement" (R. 219). It noted as "almost startling" that "so little of the evidence" relates to 1950 or the years thereafter (R. 224). Nevertheless, the court below affirmed the order of the Board per Judges Prettyman and Danaher with Chief Judge Bazelon dissenting (R. 215-232).

Summary of Argument

I.

Section 3(4) of the Act defines a "Communist-front organization" as one which is (a) "substantially * * * controlled by a Communist-action organization" (*i.e.*, the Communist Party) and (b) "is primarily operated for the purpose of giving aid and support" to a Communist-action organization. The Board has the burden of supporting its findings by "the preponderance of the evidence". Its determination must be made as of the time of its report and not with regard to the past.

In the instant case, neither the control nor the objective components were established by a preponderance of the evidence. At least since 1949 petitioner's affairs have been conducted by two principal officers, Messrs. Fishman and Wolff, and there is no evidence connecting either of these two with the Communist Party during this period. The court erred in finding such control in an Executive Committee whose existence was assumed and whose powers were never proven.

The Board treated petitioner's pre-Act activities as the gravamen of the case and disregarded petitioner's post-Act history. The court failed to correct this error. It did agree with petitioner's description of its activities subsequent to the passage of the Act. These activities were shared, as the court found, by non-Communists, were protected by the First Amendment and were not proscribed by the statute. There is no basis, therefore, for the finding that petitioner was primarily operated for the purpose of supporting the Communist movement.

II.

The Board and the court below misinterpreted the Act and applied erroneous standards.

A. Under the Act, the Board was directed to take into consideration each of the four criteria listed in Section 13(f) of the Act, to make a determination as to the present, and to base it upon a preponderance of the evidence. Each of these criteria was misinterpreted and misapplied below.

1. Section 13(f)(1) requires the Board to determine the extent to which persons active in the supervision of petitioner were also active in the management of or as representatives of the Communist Party. Instead, the Board inquired as to whether members of petitioner were also members of the Communist Party. It interchangeably employed the terms "member", "functionary" and "representative", and failed to define them, or to show the evidentiary basis for its categorization of individuals. The court, while disagreeing with the Board, did not require it to reassess the facts.

The Board misapplied the Congressional standard by eliminating the element of time from its consideration. The statute, as the court below held, requires a finding that petitioner's managers were simultaneously Party representatives. The failure to deal with the temporal element

is particularly significant because since 1950 petitioner's affairs have been conducted by two officers, as to whom there is no evidence even of Communist Party *membership* later than 1940 and 1941 (R. 106, 173). The court below made a similar error in relying exclusively upon a single letter, the signatories to which had no post-statutory Communist connections.

2. The Board misconceived the criterion in Section 13(f)(2) which is not whether the Communist Party supported petitioner, but "the extent to which" petitioner's support was derived from the Communist Party. The Board failed to make the comparison between Communist and non-Communist support required by the statute. The Congressional debate shows that the phrase, "extent to which", was expressly adopted by the framers of the legislation to require a determination of relative measure of support. In any event, the findings of post-statutory "support" are limited to three items of publicity in the Communist Party press. This is not what Congress had in mind since Section 13(f)(2) must mean support which is solicited or affirmatively accepted.

3. The Board and the court below made four basic errors in construing the third criterion, Section 13(f)(3) *i.e.*, the extent to which petitioner's resources were used to promote Communist objectives.

(a) They ignored the relativity test, thereby disregarding the principal use of petitioner's resources for the rehabilitation of veterans.

(b) The Board ignored the post-Act events and devoted its report to an elaborate discussion of 1936-1950 as the heart of the case rather than as background. The court, while enunciating the correct principle, did not compel the Board to apply it to this case. The court also accepted without any review the Board's description of background events, including some which are contrary to history.

(c) The Board and court failed to relate the objectives referred to in this criterion to those found by Congress to be the objectives of the world Communist movement, namely, the overthrow of the government by force and violence, if necessary, and the establishment of a totalitarian dictatorship. There is no evidence that any of petitioner's resources were used to promote those objectives and the Board did not find that they were. The Board assumed that any objective, however innocuous, was the Communist objective against which the Act was directed if it happened to be supported by the Communist Party, *i.e.*, it erroneously applied the non-deviation criterion, Section 13(f)(4), to establish the objective criterion of Section 13(f)(3).

The court confused the issue further by stating that innocent activities were an unlawful objective if they resulted from Communist Party control rather than from "independent conviction"; by this test, which was not adopted by the Board, the latter's order must fall because there is nothing in the record to show that petitioner's post-statutory activities were not a matter of independent conviction. Finally, to establish the objective or aid component by proof of the control component would make the former redundant.

4. The Board misconstrued the non-deviation criterion, Section 13(f)(4), in five ways: (a) it again disregarded the time factor; (b) it ignored the fact that petitioner's views were shared by non-Party people; (c) it relied upon non-deviation as to indisputable facts; (d) it disregarded the substantial differences of viewpoint between petitioner and the Communist Party; and (e) it unreasonably found non-deviation in petitioner's positions on such matters as the Internal Security Act, pursuant to which this proceeding was instituted.

B. The Board erroneously relied on evidence which was not connected with petitioner. It attributed to peti-

tioner all of the activities of its members, even though they were not acting on behalf of it. It relied upon promotions inside the Communist Party of some members of petitioner, though the evidence showed no connection with activity in petitioner. The Board charged petitioner with the Communist Party activities of its members, likewise unconnected with petitioner. The Board's report relied on inadmissible evidence, both documentary and testimonial. It advanced the untenable legal theory that the hearsay rule does not apply to Party publications or conversations in Party circles.

C. The Board's order is based upon a misinterpretation of the statutory criteria, a distortion of the record and a reliance on evidence either unconnected with petitioner or inadmissible as hearsay. All of this required a reversal of the Board's order. It was not appropriate for the court to consider whether the evidence would have sustained the Board's order on the basis of appropriate standards and proper evidence. The court below failed even to consider many of the criticisms of the Board noted above. This denial to petitioner of the judicial review to which it was entitled under Section 14 of the statute could be remedied only by remand to the court below.

The court compounded the injury by adopting standards different from those of the Board, some of which were correct and others constituted errors of which the Board had not been guilty. In the light of the disoussion in Point I, the appropriate remedy would seem to be a reversal of the judgment below and a dismissal of the proceeding. At the least, a remand to the Board is required in accordance with the *Chenery* rule. This is particularly appropriate because the record is even staler today, as Judge Bazelon pointed out, than it was nearly a decade ago when the Board made its findings, based upon the events of the 1930s or 1940s.

III.

The provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face and as applied.

A. The Act, the Board's order and the court's opinion restrain rights of association, speech, press and petition, all of which are protected by the First Amendment. The considerations of danger to the government, upon which this Court based its decision in the *Communist Party* case, are not present here in an organization whose activities are recognized as innocuous and lawful. The disabilities imposed upon such an organization are so destructive as to discourage not only association with petitioner, but the exercise of other First Amendment rights.

B. The court's decision removes from the statutory definition of a Communist front the only specific reference in the Act, *i.e.*, the objectives of the world Communist movement, that can render it definite and meaningful. Absent such a reference, the statute as applied here creates a vague standard which, particularly in the area of the First Amendment, offends due process.

C. The order below is predicated upon events antedating the statute. It therefore constitutes a retrospective statute which denies due process and which violates the *ex post facto* provision of the Constitution. There is no rational basis in an allegedly regulatory statute for requiring the registration of petitioner upon the basis of pre-statutory events.

D. Petitioner has been held by the court below to be bound by the earlier determination that the Communist Party was a Communist-action organization. This violates the due process principle that one may not be deprived of liberty or property without an opportunity to contest the factual premises upon which the deprivation depends. Peti-

tioner was not a party to the Communist Party proceeding, and the Board did not establish in this case that the Communist Party was a Communist-action organization. Further, the Board made no determination in the instant case that the Communist Party was an action organization at the time of the order against petitioner.

E. The Act is invalid because it conflicts with the constitutional privilege against self-incrimination. In the Communist Party case, a minority of this Court urged that the Communist-action provisions of the Act were invalid because they conflicted with the privilege against self-incrimination of the Communist Party's officers. This view should prevail in the instant case, particularly in view of the failure of the Communist Party to register and the recognized differences in the Act between the Communist Party and Communist-front organizations.

F. The Court should consider the totality of sanctions imposed by the statute upon so-called Communist-front organizations and their members. These very substantial disabilities should not be given effect in the case of organizations to which the sinister objectives of the statute cannot be attributed.

ARGUMENT

1. The Board's order was not supported by a preponderance of the evidence either as to substantial control or as to primary purpose.

Section 3(4) of the Act defines the term "Communist-front organization" as "any organization in the United States * * * which (A) is substantially directed, dominated and controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Com-

munist foreign government, or the world Communist movement."

The Act places a greater burden on the Board than is normally placed upon administrative agencies. It requires that the findings of the Board be supported by "the preponderance of the evidence" (Section 14). The proponents of the Act emphasized that this stricter burden of proof was an important safeguard deliberately inserted to prevent the unfair labelling of an organization. See 94 Cong. Rec. 6136-7, 96 Cong. Rec. 13765,[6] 96 Cong. Rec. 14531,[7] 96 Cong. Rec. 15247:[8] The determination must be made as of the time of the Board's report, December 21, 1955 (R. 74). (See Section 13(g)(1)).

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[6] Rep. Nixon: "* * * in this bill we provide that when an organization which has been found by the Subversive Activities Control Board to be a Communist front or a Communist-action organization makes its appeal to the court, the court on appeal must find that the decision by the Board is sustained by a preponderance of the evidence, a standard which I may say goes much further than any law on the books at the present time governing appeals from administrative bodies.

"I should at this point say that the reason we did this was that we recognized we were dealing here in a field which should be distinguished from legislation affecting property rights, and we felt it was essential to give every possible guaranty to the individuals or organizations involved."

[7] Senator Ferguson: "Not just a scintilla of evidence will suffice, nor will mere substantial evidence support the Board in its findings. It must be the preponderance of evidence, as contained in the full record. [The Board] must weigh all the evidence of record and reach its conclusion on the basis of each evidentiary factor presented in proof or in denial."

[8] Senator Holland: "It is no small thing to charge, it is no easy thing to establish, and it is no small thing to have proven that an organization, as defined in this act, is a Communist-front organization."

In the instant case, there is no evidence whatsoever of post-statutory activities establishing either element of the statute—substantial direction by the Communist Party or the primary purpose of aiding the Party.

A. The Substantial Control Component

The record shows (Tr. 3541-2, 4335-8, 4408-9), the Board found (R. 107, 193) and the court below agreed (R. 224) that since 1950 petitioner has been managed and directed by its two principal officers, Milton Wolff and Moe Fishman. The court below found that there was no evidence to support the Board's finding that either officer was a functionary or representative of the Party.[9] Since as the court below held, the statutory definition of control can be satisfied only by a finding that the "key" managers of the petitioner after 1950 were party representatives (R. 222), there is no evidence, certainly no preponderance of evidence, as to Communist domination in the post-statutory period.

This should have been conclusive; but the court below disregarded its own rule. It deduced Communist domination of petitioner from some signatures appended to a single letter of April 25, 1952 which promoted the sale of an anthology of writings about the Spanish Civil War (R. 223). We discuss this in greater detail than it intrinsically merits

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[9] The court added rather obscurely: "The representative capacity, if any, of these two must be inferred from the fact that they made reports to the Politburo concerning the Brigade" (R. 223). But there is no evidence of any kind and no finding by the Board that Fishman ever reported to the Politburo. The only evidence with regard to Wolff is the testimony of Budenz that Wolff on *one occasion* reported on the VALB to an enlarged National Committee meeting *in 1940* (Tr. 2643). Wolff denied this testimony (Tr. 4223). Indeed, there is no testimony connecting Wolff with the Communist Party even as a member later than 1941 (Tr. 2703, 2753-4), and none with regard to Fishman later than about 1940 (Tr. 1944-5, 2002-7).

because it is the only evidence suggested to refute the undisputed evidence of Wolff-Fishman control.

The letter was signed "Fraternally yours for the National Committee of the Veterans of the Abraham Lincoln Brigade, Milton Wolff, National Commander, Moe Fishman, Executive Secretary" (R. Ex. 44). Following these signatures were the signatures of nine other individuals. The court assumed without further evidence that these nine were members of a National or Executive Committee, that four of them were representatives of the Communist Party at the time of the letter, and that they managed the petitioner (R. 225). The letter should have been disregarded and in any event, under the preponderance of evidence rule, it cannot override the accepted evidence as to the non-Party management of Petitioner by its two officers.

First, it is not at all clear in what capacity the nine individuals had signed the letter. It is more likely, in view of its phraseology, that only Wolff and Fishman signed "for" the National Committee, and that the other nine individually endorsed their request for the sale of the anthology. There is no evidence to explain the letter or to show that the nine were ever elected or appointed to a national committee. The letter, itself, is not a statement of policy or position on behalf of the organization; it is a promotional letter for the sale of a book. It is a very slender reed on which to rest the devastating conclusion of substantial domination by the Communist Party.

Secondly, there is no basis for the assumption that the four (or even the nine) controlled the petitioner. The court inferred control solely from the *imputed* title of the individuals.

> "But the part of these men in the management or control of the Brigade must be inferred from the fact that they were members of the National Committee. The duties of that Committee are not shown by direct evidence. But absent contrary evi-

> dence it is reasonable to assume that a small 'National Committee' had duties relating to management.'" (R. 225-26)

Third, even if we assume, despite the total absence of evidence, that a National Committee had duties relating to management during the 1950-54 period, there is no evidence to show that this factor resulted in control and domination by the Party. Here, the court ignored its own stricture (R. 222) that it is impermissible to infer post-1950 membership or participation in the Communist Party solely from pre-1950 evidence; see also *National Council of American-Soviet Friendship* v. *Subversive Activities Control Board*, 322 F. 2d 375, 384. A national board had not met or functioned since 1949 (R. 223; see also Tr. 3341-3343, 4335-4338, 4408). Of the eleven-man National Committee, the court thought that only four could be characterized as representatives of the Party (R. 224-25). Not one is shown to have been a member, much less a representative after 1950. Chief Judge Bazelon thus summarized the evidence:

> "But as to these four of the eleven top officials of the Brigade in 1952, the court ignores the age of the evidence that they were Party functionaries. The most recent evidence on any of the four concerns Weisman, said to be a Party organizer in 1949, and Nelson, on whom the evidence dates from 1946. The finding on Love is based on [fol. 237] testimony given by Horan, who left the Party in 1939, concerning Love's activities in Spain in 1938. The evidence about Harold Smith goes back to 1946, when Earl Browder was expelled from the Party and Smith, his bodyguard, remained loyal to him. Continued loyalty to a man who had been expelled in 1946 does not support an inference that Smith was a Party functionary in 1952." (R. 231-232).

Nothing in the record including the foregoing meets this Court's authoritative definition of subjection to con-

trol: "a disposition unerringly to follow the dictates [of the controller] not by the exercise of independent judgment on the intrinsic appeal that those dictates carry, but for the reason that they emerge from that [controller]". *Communist Party* v. *S. A. C. B.*, 367 U. S. 1, 39-40. No instance is cited to show that petitioner received dictates from the Communist Party or adopted policies other than those arising from its own independent judgment. Thus, meaningful evidence of control is lacking.

B. The Primary Purpose Component

The court agreed with petitioner's description of its post-1950 activities.

> "The Brigade says in its brief to us that since the latter date its activities have consisted of social affairs, statements in opposition to the Franco regime, the rehabilitation of Brigade members in need of aid, support of its members indicted under the Smith Act, particularly Nelson and Weissman, and defense of itself in the present proceeding. The report of the Board does not materially contradict this factual position. It finds, and supports with numerous record references, besides a few unimportant incidents, vigorous and vehement opposition to Fascism and particularly to Franco, outspoken opposition to the Internal Security Act and all similar legislation, vigorous support of its indicted members, particularly Nelson, and efforts to defend itself." (R. 226-227)

It agreed "that these positions on these subjects were also held by many people who were not even remotely allied with the Communist Party" (R. 228).

These are certainly not the activities condemned by the statute which describes Communist objectives as:

> "* * * bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorship which will be subservient to the most powerful existing Communist totalitarian dictatorship" (Section 2(b)).

The court, however, disregarded the fact that the activities involved were not those comprehended by the statute, *infra*, p. 1a, and by this Court in upholding the statute, *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1. It held that innocuous objectives were comprehended by the statute, depending upon the motivation of the organization. As the court said:

> "When a person, or an organization, actively presses objectives which are objectives of the Communist Party, does he or it do so as a matter of independent conviction, or does he do so by reason of substantial direction or control by the Communist Party and for the purpose of giving aid and support to the Party? This is a question of fact, the answer to which is to be derived from the record" (R. 228).

We treat of this error of law, as we believe it to be, below, *infra*, pp. 30-32. It is sufficient here to note, first, that the Board never posed the question in this way, and second, that nothing in the post-1950 life of the petitioner is cited to show, in compliance with the preponderance of evidence rule,[10] that the activities were undertaken primarily[11] "for the purpose of giving aid and support to the Party".[12]

Our view is supported by a closer examination of the admitted post-Act activities:

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[10] See the discussion *supra*, p. 14, to the effect that the Board has a greater burden of proof than that normally imposed on administrative agencies. As to the requirements of this latter burden, see *Consolidated Edison Co.* v. *National L. R. Bd.*, 305 U. S. 197; *National Labor Rel. Bd.* v. *Columbian E. & S. Co.*, 306 U. S. 292.

[11] See Senator Ferguson's emphasis on the significance of the word "primarily". 96 Cong. Rec. 14530.

[12] In recapitulating petitioner's post-Act activities, the court referred (R. 227) to, among other things, statements on the Korean War and attacks on the Un-American Activities Committee. But the Board's findings on these matters pre-date the Act (R. 170-173).

(a) *Opposition to fascism and Franco.*[13] Despite the contrary opinion of the Court (R. 227-228), opposition to Fascism and Franco is not a peculiarly Communist point of view. On the contrary it has been, at least until quite recently, the consistent position of the majority of the American people (R. Ex. 15).[14] It is the position which one would expect of those who made such sacrifices in the Spanish Civil War.

(b) *Self-defense.* The presumption that an organization would defend itself "as a matter of independent conviction" is so great that in the absence of some contrary tangible evidence it is only fair to assume that this was the organization's reason for action in this area. There is no contrary evidence in the record.

(c) *Opposition to the Internal Security Act.* This activity was intricately tied in with the organization's self-defense campaign. Indeed, of the four post-Act exhibits relied upon by the Board for its findings in this area (R. 173-178), three (P. Exs. 116, 227 and 225) dealt with the organization's defense against the proceedings in this case.

(d) *Defense of its members prosecuted under the Smith Act and state sedition acts.* Here, too, it was quite natural for the organization to come to the defense of its own members, and in the absence of some concrete evidence, which is lacking here, there is no basis for assuming that

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[13] The Board was disturbed by petitioner's publication of an anthology of writings about the Spanish Civil War whose contributions included Heywood Broun and Herbert L. Matthews, *supra*, p. 15, R. 129; and by petitioner's protests against the appearances of a Falangist Dance Group from Spain (R. 129) and the visit of the Mayor of Madrid (R. 162).

[14] See, *e.g.*, Payne, *The Civil War in Spain* (G. B. Putnam Sons, New York, 1962); United Nations Security Council, Report of the Subcommittee on the Spanish Questions (R. Ex. 34), pp. 38-39, 59-75. Indeed, even the Board recognized that anti-Fascism is the general attitude in this country (R. 208).

it did what it did because of outside direction. Moreover, the court ignores the significant fact that the petitioner's defense of these individuals was successful and that the convictions were set aside. *Commonwealth of Pa.* v. *Nelson*, 350 U. S. 497; *Mesarosh* v. *United States*, 352 U. S. 1; *Wellman* v. *United States*, 253 F. 2d 601.

The court's recognition that these post-Act activities are not proscribed by the Act is shown by its suggestion that "the Board was entitled to view these events in the context of, or through the coloration of, the past" (R. 228). This, as we show below, would make a mockery of the time factor emphasized by the court, would change the statute from a regulatory to a punitive one, and would create substantial problems under the due process and *ex post facto* clauses of the Constitution. In any event, the preponderance of evidence rule is not met by a total reliance, as here, upon the past.

II. The Board and the court misinterpreted the Act and applied erroneous standards.

A. The Issues Before the Board and the Standards to be Applied

In determining whether an organization meets the definition of a Communist-front organization, the Board was required to take into consideration the four criteria set forth in Section 13(f) of the Act:

> "(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 781 of this title; and,
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> "(2) the extent to which its support, financial or otherwise, is derived, from any Communist-action organization, Communist foreign government, or the

world Communist movement referred to in section 781 of this title; and,

"(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 781 of this title; and,

"(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 781 of this title." (§ 13(f))

Under the Act, the Board is required to take into consideration each of these four criteria, H. Rep. 2980, 81st Cong. 2d Sess., p. 12, 96 Cong. Rec. 15248, and no one criterion can be dispositive of the ultimate issue, 96 Cong. Rec. 13725, 13764, 14531, 15669, 15678. And as we have noted, *supra*, p. 14, the Board's findings must be supported by "the preponderance of the evidence."

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(1) Under § 13(f)(1), the Board was required to determine the extent to which persons active in the supervision of petitioner were also active in management of or as representatives of the Communist Party. Congress did not consider it relevant here that persons active in the management of one organization were mere members of the other. Since the court below has indicated its reasons for agreement with this view (R. 220-222) we need not repeat the statutory analysis made below.[15] But the Board totally failed to meet this requirement. It made much use of the terms "functionaries" and "representatives" but it never defined them or stated the evidentiary basis on which it

[15] See also 96 Cong. Rec. 14252; testimony of Donald Richberg in Hearings before the Committee on the Judiciary, of the United States Senate, 80th Cong., 2d Sess. on H. R. 5852, p. 14.

reached its conclusion that individuals should be thus characterized. Instead the Report merely uses the formulae that named individuals "are established to have been C. P. U. S. A. functionaries" (R. 99), or has been "established as a Party functionary" (R. 101), or are "identified herein as Party members or functionaries" (R. 101), or "the following Party representatives" (R. 107). The Report contains no transcript references for any of these findings. Plainly the Board sees no distinction between members, functionaries, or representatives of the Party;[16] hence it ignored entirely the criterion established by Congress and substituted its own less restrictive and amorphous standard. Since the Court disapproved this assimilation of mere membership to official leadership (R. 220, 222), it should have dismissed the proceeding or remanded the matter to the Board to comply with the statutory standard.

The Board's second error was to eliminate the element of time from its consideration. The events it describes cover a span of eighteen years from 1936, the beginning of the Spanish Civil War, to 1954. It never found that a particular individual was simultaneously a representative of both the Party and the petitioner. (See, *e.g.*, Tr. 1158-9; Tr. 1284, 1291-3, 1305-6, 1329, 1335-7). The court again disapproved in principle with this approach of the Board

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[16] *E.g.* after listing the names of individuals whom the Report elsewhere describes as "established functionaries" or "representatives", the Board recites that the government's "evidence establishing that the officers and members of the respondent above so found are Party *members* is left uncontradicted" (emphasis supplied) (R. 108-109). And in a footnote, the Board states that it is overruling petitioner's exceptions to the findings in the Recommended Decision that "some twenty-odd of its named officers are shown to be *Party members or functionaries*" (emphasis supplied) (*ibid.*). On the basis of such findings the Board concludes that petitioner's "principal active officers, since its inception, have also been *functionaries and representatives of the Party*" (emphasis supplied) (R. 109).

(R. 224). But it made a similar error, decisive to its conclusion, in relying upon the signatories to the letter dated April 25, 1952 when the evidence as to their Communist Party connections was entirely pre-statutory (*supra*, p. 17).

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(2) The Board misconceived the significance of the criterion in § 13(f)(2), which is not whether or not the Party supported the petitioner, but rather "the extent to which" petitioner's support was derived from the Party. See *Communist Party of U. S. v. Subversive Activities Control Board*, 96 App. D. C. 66, 96, 223 F. 2d 531, 561.

Thus it ignored the question of the measure of Communist Party support *in relation* to the total support received by petitioner. It found (R. 131) that the Party supported petitioner, but held that support to the petitioner by non-Communist sources was irrelevant (R. 131-132). It ignored the considerable evidence of support from non-party sources, *e.g.*, letters or telegrams, endorsing and praising petitioner from Marine General Carlson (R. Exs. 21, 22); from Harold L. Ickes (R. Ex. 35); from Herbert Matthews (R. Ex. 37); from Louis Bromfield (R. Ex. 38); from Jo Davidson (R. Ex. 39); from Vincent Sheean appealing for funds to be sent to petitioner (R. Ex. 36; Tr. 3790); endorsement by Ernest Hemingway (Tr. 3831).

Congress deliberately adopted the phrasing "extent to which" in order to prevent a reliance by the Board on the existence of support without regard to its relative extent. Thus, in the Senate debate, Senator Ferguson, co-author of the Senate bill and a member of the Judiciary Committee which drafted the final version of the legislation, stated (96 Cong. Rec. 14534, emphasis supplied):

> "It need only be repeated from the discussion of the criteria themselves that the Board must weigh each element of the evidence in reaching its decisions. The phrase 'the extent to which' is a guide in that direction.

> "I am very familiar with the suggestion of Mr. John W. Davis * * * [of] a preferable alternative. The alternative was to substitute the words 'whether or not.'
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> "That suggestion was made by Mr. Davis to the Judiciary Committee as a possible contribution to 'draftsmanship,' in his words. Like each of Mr. Davis' suggestions, for we draw heavily upon his knowledge of the law and opinion, this particular suggestion was weighed carefully by the committee.
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> "*It was our considered opinion in conclusion that the words 'whether or not' were an absolute, and took no recognition of degree* * * * Because it was our earnest desire, as I have sought to emphasize in my earlier remarks, to have ultimate decisions reached in the full spirit of the judicial process, upon the sum and not a part of the record, we advisedly adopted the phrase 'the extent to which'."

The Board's failure to follow this guide imposed by Congress explains the insubstantial nature of its findings. For example, the Board finds that the Party urged its members to support a rally of the petitioner which was attended by approximately 5,000 persons (R. 126). The Report, however, does not consider whether Party support accounted for half of the support or only 1%, how many other rallies were held, and to what extent they had Party support.

In only one instance in the Report are we given data by which to measure the extent of the support received by the petitioner from the Communist Party. According to the Report (R. 123-124), the petitioner, in 1945, raised nine to ten thousand dollars at a dinner. Of this sum, $500 came from Communist Party sources.[17] Thus, on the basis

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[17] Even of this sum, only $300 came unequivocally from the Communist Party, the remaining $200 being contributed by Communist Party officials, and the record does not show, nor does the Board find, that these contributions were made by them in their official capacity rather than as individuals. The Act speaks of support from a Communist-action organization, not from individuals who also hap-

of this incident, which is the only one showing a relationship between Communist Party contributions and total contributions from other sources, the Board should have found that the extent to which petitioner derives support from the Communist Party was 5%. Such a finding, we submit, could not support the conclusion that the petitioner is controlled by the Party and operates primarily in its interest.

Moreover, the findings of Party "support" *after* the passage of the Act are limited to three items of *publicity* in the Communist Party press as to activities of the petitioner (R. 128-129).[18] We do not agree with the conception that newspaper publicity can constitute support under the statutory criterion. Section 13(f)(2) necessarily refers to support which is solicited or affirmatively accepted; otherwise an organization would be condemned by the conduct of others over which it has no control. In any event, three

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pen to be Communists. The same paragraph of the Board's report (R. 123-124), also lists a contribution of $1,200 from one Charlotte Honig, who was identified as a Communist Party member (R. 123). But there is no evidence that this was a Communist Party contribution and the Board does not so find. The government's evidence shows that Mrs. Honig's support of the petitioner stemmed from the fact that her son had died in Spain while fighting for the Republican government (Tr. 1940-1).

[18] We do not include here as evidence of support P. Ex. 172, which, according to the Board, "publicizes [petitioner's] tribute to Stalin," in 1953 at the time of his death. The Board's argument (R. 130-131) that articles in the Daily Worker, unlike those from the New York Times or the Herald Tribune, are admissible in evidence to prove the truth of their statements can only be described as bizarre. See, *infra*, pp. 42-43.

We also do not consider as evidence of Party support, the fact that *The Heart of Spain* (R. Ex. 44), was printed by the same company that printed Party publications (R. 129). The mere fact of printing is no indicia of support in the absence of evidence that this printing was done on other than a purely commercial basis, and there is no such evidence.

items of publicity are neither substantial evidence of Party support nor an index of the extent of such support from Party as contrasted with non-Party sources.

The court's opinion likewise fails to evaluate "the extent to which" petitioner's support was derived from the Party. All that appears in the opinion of the court is a generalization: "in the light of all that had gone before, considering the extent to which * * * the Party supported it" (R. 228-229). It is not clear whether the court was referring to as pre-statutory or post-statutory support and its "discussion of the evidence" does not "demonstrate the point." (R. 229).

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(3). The Board and court made four basic errors in construing the third criterion, "the extent to which" petitioner's resources are used to promote "the objectives" of the Communist Party [Section 13(f)(3)]. They ignored (a) the "extent to which" test, (b) the distinction between pre-statutory and post-statutory activities, (c) the statutory definition of Communist objectives, and (d) the requirement that both the control and objective components of a Communist-front organization be established. We treat these errors seriatim:

(a) The Board made no effort to contrast the use of petitioner's resources for Communist and non-Communist objectives. Consequently, it ignored the undisputed evidence that one of petitioner's principal functions, if not the principal one, was the rehabilitation of veterans. (R. 94-95; Tr. 3529-30, 3554, 3863-69; P. Ex. No. 651 (Certificate of Incorporation of Petitioner); P. Ex. 59[19], 68, 71, 72, 73).

The Board's Report does not indicate that it considered this rehabilitation program in the total program of the petitioner, presumably because it did not consider that this

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[19] The next to last page of this Exhibit is the petitioner's estimated budget for 1940. Of a total budget of $13,527.00, $11,500 is allocated for rehabilitation.

program constituted evidence of Communist Party control or direction, or of operation of the petitioner for Communist Party purposes. But it was the Congressional intention that the Board make its findings on all evidence in the record and not on just some evidence; this was the purpose of including the phrase "the extent to which."[20]

(b) The Board ignored the events of the current period and devoted its Report to an elaborate discussion of the events of 1936 to 1950 as the heart of the case, rather than background to illuminate the present. See *Communist Party* v. *S.A.C.B.*, 367 U. S. 1. 69; *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 704. This is most graphically revealed by its summary of the evidence (R. 203-208) in which it not only failed to show any appreciation that consideration of the 1950-54 events was crucial to its determination, but *failed to discuss these post-statutory events at all.*

The Board's Summary contains a recitation of "[t]he facts established by a preponderance of the evidence" beginning in 1936 and ending with the Hitler-Stalin pact in 1941[21] (R. 203, 207-208). It would appear from the Summary that the crux of the Board's case was its finding as to petitioner's position on the Hitler-Stalin Pact (R. 207-208).

The court below correctly stated that the Board was entitled to view present events "in the context or through

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[20] See the quotation from Senator Ferguson, *supra*, pp. 24-25. See also 96 Cong. Rec. 14531 where Senator Ferguson stated that the Board "must weigh all the evidence of record and reach its conclusion on the basis of each evidentiary factor presented in proof or in denial." This same requirement is imposed upon the Board by the Administrative Procedure Act as well, *Universal Camera Corp.* v. *National L. R. Bd.*, 340 U. S. 474. The later Act is expressly made applicable to proceedings of the Board, by § 16 of the Internal Security Act, 50 U. S. C. § 795.

[21] See *Communist Party* v. *S. A. C. B.*, 367 U. S. 1, 67, holding that it was fair to assume that the Board relied for its conclusion only on those matters set out in its Summary.

the coloring of the past" (R. 228). But as we have seen, the Board never exercised this right; it totally ignored current events, and treated the past as the core of the case.

The court's opinion shows the inadequacy of the 1950-54 events as a basis for the finding against petitioner. And if "background" events are essential to the Board's order, then petitioner was entitled to a full court review of those events. The court merely took the Board's statement of the background evidence without examination or review, although petitioner challenged the accuracy of the Board's findings throughout.[22] Apparently crucial to the court's decision is its view that the Spanish Civil War was "basically" a struggle between Communism and Fascism (R. 228). This finding is not supported either by the record[23] or by history.[24]

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[22] Although unimportant in itself, illustrative of the Court's approach is its recital (R. 223) that there was a dispute between the Board and the petitioner as to how many of the American volunteers returned from Spain. But the dispute was not solely between the Board and petitioner, but between the Board and the record (see P. Ex. 50, R. Ex. 44).

[23] The only competent evidence in the record on this issue, that of General Jose Asensio (Tr. 2971-3004, 3076-3129), showed that the Republican forces in Spain consisted of a coalition of a number of political parties representing the overwhelming majority of the Spanish people. Similarly the Republican cause was supported by 75% of the American people (Resp. Exh. 15).

[24] See, *e.g.*, Benns, *Europe Since 1941 In Its World Setting* (Appleton-Century Crofts, Inc., 1954), pp. 328-9; Palmer, *A History of the Modern World* (Alfred A. Knopf, 1956), pp. 821-2; Zebel, *A History of Europe Since 1870* (J. B. Lippincott Co., 1948), p. 643; Hall, *Europe in the Twentieth Century* (Appleton-Century Crofts, Inc., 1957), p. 242; Thompson, *Europe Since Napoleon* (Alfred A. Knopf, 1952), pp. 675-6; Ergang, *Europe in our Time, 1914 to the Present* (D. C. Heath & Co., 1958), p. 389.

Even if it be conceded that historians differ as to the nature of the Spanish Civil War, it is not appropriate for either the Board or the Court to formulate a legal conclusion which is to any degree based upon an unsubstantiated or disputed historical premise. This is especially true under circumstances where neither the Board nor

(c) The fundamental error below was to disregard what Congress meant by Communist "objectives," as used in Section 13(f)(3) as a basis for determining the aid or objective component in Section 3(4)(B). The answer is found in Section 2 of the Act which sets forth the objectives of the Communist movement, *viz.*, the overthrow of the government by force, if necessary, and the establishment by terroristic means of a totalitarian dictatorship. As Judge Bazelon, dissenting in the companion case, said:

> "I think the word 'purpose' in § 3(4) should be read in connection with the word 'objectives' in § 3(3). This context indicates that 'purpose' is intended and should be understood to be limited to the purpose of aiding a Communist-action organization to advance the objectives of the world Communist movement." *American Committee for Protection of Foreign Born* v. *S. A. C. B.*, 331 F. 2d 53, 61-62, *cert. gr.*, 377 U. S. 915.

The Board assumed that any innocuous objective was the Communist objective against which the Act was directed if it happened also to be supported by the Communist Party. In short, it regarded evidence of mere non-deviation under the fourth criterion, Section 13(f)(4), as proof of Communist "objectives" under the third criterion, Section 13(f)(3).

This was error because as stated by this Court in *Communist Party* v. *S. A. C. B.*, 367 U. S. 1, 59, 61 and by the court below in *Communist Party* v. *S. A. C. B.*, 99 App. D. C. 66, 95196; 223 F. 2d 531, 561, the non-deviation standard is relevant only to the control component and not to the objective component. This is true because all of the evidence considered under the non-deviation standard are expressions protected by the First Amendment (R. 131-178). Since these views are not inherently invidious

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the Court has undertaken the necessary historical research as a basis for coming to its own judgment on the subject. Moreover, historical controversies have not traditionally lent themselves to judicial resolution.

they may be considered only insofar as the non-deviation proves outside domination. And because these views are protected by the First Amendment, a registration order based solely upon the finding of non-deviation as described in criterion 4 cannot stand. Hence, Senator McCarran, Chairman of the Senate Judiciary Committee which considered the legislation, in replying to the veto message of President Truman and in urging the Senate to override the veto, stated, 96 Cong. Rec. 15678:

> "On page 9 of the mimeographed copy, the veto message states that the bill would permit a determination that an organization was a Communist-front organization to be based solely upon the 'extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those' of a Communist movement. Mr. President, that statement simply is not so. The able Senator from Florida, Mr. Holland, on the floor of the Senate on Wednesday most ably demonstrated that it was not so." [25]

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[25] See also the similar remarks on the floor of the House made by Congressman Walter speaking for the House Committee on Un-American Activities which reported the bill in the House, 96 Cong. Rec. 13725. Cf. H. Rept. No. 2980, 81st Cong., 2d Sess., the report of the House Committee on Un-American Activities on the bill at p. 3 (emphasis supplied):

> "In considering the problem, the committee found it necessary at the outset to distinguish those features of Communist activity against which legislation cannot and should not be directed from those in the case of which legislative restraints are clearly practicable and necessary. Communism as an economic, social, and political theory is one thing. *Communism as a secret conspiracy, dedicated to subverting the interests of the United States to that of a foreign dictatorship, is another.*
>
> "The committee holds no brief for the economic, social and political theories which the Communists advocate, but we contend that, under our constitutional system, ideas must be combated with ideas and not with legislation. If communism in the United States operated in the open, without foreign direction, *and without attempting to set up a dictatorship subservient to a foreign power, legislation directed against it would neither be justified nor necessary.*

The Board made a different kind of error in finding that the petitioner's payment of salaries and expenses to its own officers and employees constituted support of the Party and the world Communist movement (R. 186-187). Without evidence as to the nature of the work of these officials and employees, it is improper to find that these internal operating expenses support Communist objectives.[26]

The court, without discussion, rejected petitioner's claim that the Communist "objectives" of 13(f)(3) (and the aid or objective component of Section 3(4)(b)) cannot be met by evidence of innocuous activities. But it added a new condition to the Board's reliance upon non-deviation—proof that the innocent policies resulted from Communist Party control, rather than as "a matter of independent conviction" (R. 228).

This new test was not adopted by the Board and there is nothing in the record or in the court's opinion to show that these post-statutory activities were for the attributed purpose rather than as a matter of independent conviction. Finally, to establish the aid component by evidence of domination makes the second half of the definition redundant. Congress could have but did not define a Communist front as one substantially dominated by a Communist-action organization, without more. The court below was confused by this Court's reference to "independent judgment" in its discussion of the *control* component, *Communist Party* v. *S. A. C. B.*, 367 U. S. 1, 39-40. But this Court never suggested that it could transform an innocent into a sinister objective.

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[26] For example, Wolff who was not in recent years on petitioner's payroll was placed on petitioner's payroll during the course of the hearings in these proceedings for the purpose of aiding in petitioner's defense (Tr. 4077-8). Indeed, in recent years, the major activity and expenditures of the petitioner have been in connection with defending itself in the proceeding before the Board (Tr. 3866).

(4) The next criterion, that of non-deviation of positions, (§ 13(f)(4)), is relevant only to the control component, *supra,* page 13. It too was treated below without regard to the factor of time. The Board also ignored the fact that in many instances in which it relied upon the similarity of views between the petitioner and the Party, those views were also shared by many groups and individuals who were indisputably not Communist. Thus the common policy of both the petitioner and the Party for breaking relations with Franco (R. 153-155) was shared among others by foreign Minister Bidault of the French Government, Phillip Murray, President of the Congress of Industrial Organizations, Frank Graham,[27] William Shirer and Raymond Swing (P. Ex. 18).

The common policy of both petitioner and the Party against the impending execution of anti-Franco leaders, Alvarez and Zapirin (R. 159) was also shared by the French government, 94 members of the British House of Commons, nine from the House of Lords and 3 bishops (P. Ex. 187). Similarly the National Front movement in Spain which, according to the Board, was supported by both the Party and the petitioner in 1944 consisted of representatives from both the Left and Right Republican Parties, the Catalonian Party, the Socialist Party, the Communist Party, the Anarchist, Socialist and Communist-led trade unions, and the Catholic Party (P. Ex. 140).[28]

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[27] Graham was subsequently United States Senator from North Carolina. Significantly, he also shared with both the Party and petitioner, opposition to the Internal Security Act, see *infra,* p. 35, and indeed was probably the most outspoken opponent of this legislation on the floor of the Senate. See 96 Cong. Rec. 14532-4.

[28] Similarly during the period when both petitioner and the Party were urging that America stay out of World War II, according to the Daily Worker, this view was shared by 85% of the American people (P. Ex. 37). Although we would not ordinarily consider such evidence as admissible, under the Board's view of the infallibility of the Daily Worker, see *infra,* pp. 42-43, the statement must be accepted as true.

The Board gave great weight to the fact that both the petitioner and the Party agreed that because Spain was the mother country of Latin America, events in Spain would have considerable influence on events in Latin America (R. 151-161). But the Board may consider only those views and policies on which it is at least possible to have a difference of opinion. No individual, regardless of how anti-communist he may be, would take issue with that view just expressed.[29]

Finally, the Board failed to take note and consider evidence of substantial differences of viewpoint between the petitioner and the Party. Thus, in its discussion of Greece, the Truman Doctrine and the Marshall Plan, the Board recites the position taken by the Party as follows (R. 169-170):

> "[The Party hailed] Lenin's correctness regarding imperialism as the era of dying capitalism and the age of the proletarian revolution. Gates took the position that the United States, being the leading imperialist power, was in the throes of dying capitalism. He criticized the Truman Doctrine, the Marshall Plan, and the North Atlantic Pact as imperialistic and capitalistic, designed to gain control of the nations of Europe in order to prevent them from coming to an agreement with the Soviet Union and other European Communist nations. He further stated that the working class, under the guidance of Marxism-Leninism, could lay the groundwork for socialism in the United States and the overthrow of capitalism."

But the excerpt from petitioner's publication, quoted immediately prior to the above as an example of similarity

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[29] The Board's reliance on the statement that fleeing Nazis escaped to Argentina through Spain is erroneous for the same reason. This is not a policy or a view, it is a plain statement of fact. See *e.g.*, the *Eichman* case. And the Court may take judicial notice that Argentina dictator Peron has taken refuge in Spain.

of views says nothing about imperialism, or dying capitalism, or proletarian revolution or Marxism-Leninism or the overthrow of capitalism in the United States and the establishment by the working class of the groundwork for socialism. It speaks instead of the aspirations of the people particularly in colonial countries for "democracy • • • security, for decency, for peace." These two statements of views are obviously widely apart in attitude, basic approach, and fundamental significance.[30]

Another important instance occurred in connection with the Board's discussion of petitioner's position on the Nazi-Soviet Pact and World War II (R. 131-140). The Board's finding that petitioner "reversed its anti-fascist policies" because of the Nazi-Soviet Pact (R. 136) is a distortion of the record. Wolff testified that the petitioner consistently opposed the Fascist governments of Germany, Italy and Spain and that this opposition continued after the Nazi-Soviet Pact (Tr. 3607-8, 4159). Petitioner also opposed the English and French governments headed by Chamberlain and Daladier respectively because it considered them equally responsible for the destruction of the Spanish Republican government (Tr. 4159). It was for this reason that petitioner opposed our government taking sides in the conflict. The character of the war began to change for petitioner when Churchill came to power in England during the Nazi campaign in Yugoslavia and during the fall of France. The most dramatic demonstration of

[30] It is not necessary for a finding of deviation that there be a direct conflict in views. Criterion 4 speaks of the extent to which the views of the alleged Communist-front do not "deviate." It does not pose as the test the extent to which the views do not conflict. In the course of the Senate debate, Senator Graham attacked the non-deviation standard as a criterion for a finding that an organization was a Communist-front. In reply, Senator Mundt, one of the authors of the bill, said that the failure to take a position similar to that of the Communist Party would be considered by the Board to be evidence of deviation. 96 Cong. Rec. 14532.

the change was Hitler's attack upon Russia (Tr. 4161). But petitioner's opposition to Franco, Mussolini and Hitler was never altered. The Board's failure to make findings on the basis of Wolff's uncontradicted testimony as set out above cannot be attributed to its refusal to credit that testimony. The Board recites its own version of Wolff's testimony on this subject (R. 146-147).[31]

The Board made no finding that Wolff's testimony was unworthy of belief and hence should not be credited; rather, it appears to have completely misunderstood its significance. For it found that Wolff's testimony that petitioner never altered its anti-fascist policy "neither substantially contradicts nor refutes" the Board's finding that petitioner did reverse its anti-fascist policy at the time of the Nazi-Soviet Pact[32] (R. 146). Nor is it necessary to rely solely

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[31] Characteristically, the Board relies upon Wolff's testimony that the character of the war was changed by Hitler's attack on Russia (146), but ignores his testimony on the same page of the transcript (Tr. 4161) that the character of the war had begun to change as the result of Churchill's coming to power in England, the invasion of Yugoslavia and the fall of France.

[32] The irrational nature of the Board's conclusion is highlighted by its finding that, according to petitioner, after the Nazi-Soviet Pact "the war had suddenly become * * * an imperialist war between imperialist powers" (R. 136). The Board's underlying assumption is that there had been a state of war between Germany on one side and France and England on the other; that petitioner had supported the side of France and England but "suddenly" changed its view as to the character of the war because of the Nazi-Soviet Pact. The assumption, however, cannot be squared with history. The Court can take judicial notice that World War II did not break out until *after* the Nazi-Soviet Pact. And petitioner's opposition to the Chamberlain and Daladier governments because of their role in Spain predated both the Nazi-Soviet Pact and World War II. This gaucherie of the Board is but one example of the pitfalls presented by the effort to fit historical events into a preconceived framework that will demonstrate the working of a world-wide Communist conspiracy. Despite the earnest efforts of the Board, historical events simply do not fit into this framework.

on Wolff's testimony for the proposition that petitioner, contrary to the finding of the Board, never altered its anti-fascist policy. There is also contemporaneous documentary evidence which was ignored by the Board entirely. Thus an editorial in the Herald Tribune of December 26, 1939 commented that petitioner did not follow the "Party line" because it continued to denounce Hitler despite the Nazi-Soviet Pact (R. Ex. 46). For the petitioner, Wolff replied reaffirming petitioner's firm opposition to Franco, Mussolini and Hitler (R. Ex. 47).

The significance of this error of the Board can only be appreciated in the light of the Board's conclusory findings. For, in summing up the basis for its conclusion that petitioner "functions primarily to give aid and support to the Party and the world Communist movement," the Board recited as follows (R. 207):

> "[Petitioner's] complete reversal of its 'anti-fascist' line following the signing of the Hitler-Stalin Pact, and its adoption, promulgation, and active implementation of a contrary policy and program is a most graphic illustration of this function. This abdication of its *raison d'etre* exposed 'anti-fascism' as a cloak which enshrouds its function as an instrument of the Communist united front Technique, subservient to the Party and the world Communist movement."

This argumentation furnishes the main prop for its order of registration,[33] and it is fair to say that the order could not stand in its absence. Yet, as we have shown, it is based on a faulty factual premise. Moreover, the conclusion is belied by other evidence as well. As acknowledged by the Board, the "policies of the VALB concerning Spain are its main emphasis" (R. 152). The petitioner is the only organization in the United States whose primary

[33] We discuss elsewhere our contention that in any event the registration order to be valid must be based on post-Act activities and not on occurrences in 1939, *supra*, pp. 14, 17, 23-24.

purpose is to be anti-Franco (Tr. 3872-3), and it has never altered its position of opposition to Franco (Tr. 3914, 3607-8).[34] Since petitioner has been consistently and unremittingly anti-fascist in what is concededly its major area of emphasis, there is nothing to support the Board's charge that petitioner was guilty of "abdication of its *raison d'etre.*" Despite its colorful and sweeping language, the Board does not cite a single instance to show that petitioner's unremitting hostility to Franco ever abated even to the slightest degree.

Finally, the Board's reliance on petitioner's opposition to the Internal Security Act (R. 172-174) does not establish non-deviation under the statutory criterion. This Act was openly directed against the Communist Party and alleged Communist fronts. Petitioner had already been officially "designated as a Communist front by the House Committee on Un-American Activities in 1946, and by the Attorney General in 1947 and 1948." (See *Guide to Subversive Organizations and Publications,* H. Doc. No. 398, 87th Cong. 2d Sess. pp. 166, 167.) Since the legislation was directed against petitioner, it had no choice except to oppose it.

B. The Board Erroneously Relied on Other Evidence

In addition to its consideration of the evidence encompassed within the four criteria discussed above, the Board improperly relied on other evidence as well, and the Court failed to make any comment, although the matter was fully briefed. We set it forth here in abbrieviated form.

(1) *Evidence of activities of members of VALB while acting in other capacities.*

The Board's most common error was its consideration of the activities of all members of the petitioner, as binding

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[34] The U. S. State Department has not shown the same consistency. Although at one time anti-Franco, it shifted to a pro-Franco policy, although there were no changes in the character of the Franco regime to justify such a shift (Tr. 3905-15).

on petitioner, without regard to whether or not their activities were in any way connected with the petitioner. Reliance on evidence of this nature is clearly ground for reversal since the Board itself recognized, at least in principle, that it was erroneous to do so. The Board stated:

> "It should be noted, however, that the Party activities of [petitioner's] members were not utilized as a basis for finding that [petitioner] aids the Party, except in those instances, where additional evidentiary circumstances so warranted." (R. 198-199)

Despite this disclaimer, a very considerable portion of the findings of the Board consists of evidence of this character.

(a) Petitioner's Members Promoted Within the Party.

Under this heading, the report discusses the Party positions held by members of the petitioner, or the jobs which they received with Party aid (R. 113-117), although none of this was attributable to their membership in petitioner. Most, if not all, of the individuals mentioned in this section were members of the Party before they went to Spain (Tr. 148, 370-1), and whatever recognition they got from the Party was because of their record in Spain and not because of their membership in petitioner (Tr. 144).[35] Indeed, the government's witness, Lautner, whose testimony is the chief source for this section of the Report, had no knowledge that the individuals named were members of the petitioner. He merely took it for granted that since they were veterans of the Abraham Lincoln Brigade they were also members of the Veterans of the Abraham Lincoln Brigade (Tr. 370-1). This may have been a rational and correct assumption, but the need for Lautner to make the assumption indicates that membership or activity in the petitioner had no bearing on promotion with the Party.

[35] The Board Report recognizes this at least in part. Thus a footnote recites that Steve Nelson was drafted to the Party's National Committee "because of his outstanding work in Spain" (R. 114).

Indeed, many of the individuals listed in this section as receiving Party preference and favor were not shown to have had any activity in petitioner.[36]

(b) Party Activities of its Members Attributed to Petitioner.

Despite its disclaimer, the Board persistently attributed to petitioner the Party activities of its members despite the absence of any showing of petitioner's authorization or responsibility for their activities. Thus the Board states:

> "VALB members are shown to have: taught Marxism-Leninism within the Party; recruited for the Party; brought charges resulting in enforcement of Party discipline including expulsion from the Party; been featured speakers at Party meetings and rallies; and to have actively filled a number of official Party positions ranging from Branch Organizers to National Committee members. Their Party activities have spanned [petitioner's] entire existence into the present." (R. 109-110)

Since these generalities are not otherwise specified or annotated, there is no way of determining what specific incidents in the record are covered by these findings. In any event, the Board does not find that this list of activities was engaged in by petitioner's members on behalf of the petitioner. In addition, the Board found that several of the petitioner's members lectured to Party clubs on various subjects (R. 167) and at (R. 184) that "VALB member Abe Osheroff * * * urged a Party club to promote the Daily

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[36] *Cf.* the incident recited by the Board (R. 112) where the petitioner *unsuccessfully* solicited Party official Thompson to be active in petitioner's affairs. Thompson replied that he was too busy. The implication on the Board's resport that there was something special about this effort to activate Thompson is not supported by the record. This incident was only part of a general campaign to get more people to be active in petitioner (Tr: 2104).

Worker", although none of these incidents was in any way connected with petitioner.

The Board explains that such evidence nevertheless supports a finding against petitioner as follows:

> "* * * we hold that since the vast majority of [petitioner's] officers are Party members as is a substantial portion of its membership, the activities of these persons are in many respects directly chargeable to [petitioner] which can only act via its officers and members." (R. 109)

This is a *non sequitur*. The fact that petitioner can only act through its officers and members, does not make it responsible for their conduct when they are not acting for petitioner. This view moreover, contradicts the Board's disclaimer *supra*, p. 39, that it did not consider the Party activities of petitioner's members against petitioner (R. 199).

Similarly, the Board's findings concerning the endorsement of the circulation drive of the Daily Worker by "a group of veterans of the Abraham Lincoln Battalion" were in no way linked to the petitioner (R. 180-184). The exhibits relied on by the Board (P. Exs. 236 & 237) make it plain that the veterans were speaking in their individual capacity and not on behalf of the petitioner. Nor was the Board justified in relying on Budenz' "explanation" that Exhibit 237 represented action by petitioner in the face of the Exhibit's clear language to the contrary. In fact, the Board ignored Budenz' concession on cross-examination that the veterans whose names appeared in the exhibit were acting as members of the Party and not as representatives of petitioner (Tr. 2740). The invalidity of Budenz' "explanation" is further shown by the Board's effort to bolster it by the argument made by Budenz that petitioner did not protest use of its name by the Party in Exhibit 237. In the first place, petitioner is not bound by an article in the Daily Worker, and is under no compulsion to protest under

the penalty of being bound if it does not. Secondly, in the present case, since Exhibit 237 did not in fact use petitioner's name, there was no occasion for petitioner to protest in any event.

(c) Employment of Petitioner's Members as Couriers.

The Board recites two instances involving alleged employment of two of the government witnesses as couriers for the Soviet Union or the Party (R. 184-186). Neither incident was shown to be connected with the petitioner in any way. And the witness Hecht testified that petitioner had nothing to do with the Vladivostok incident set out in the report (Tr. 2539-40). Nevertheless, the Board utilizes these incidents as the basis for findings against petitioner.

(2) *The Board's Reliance on Hearsay.*

Many of the important findings of the Board were based on inadmissible hearsay evidence. The principal instances of such reliance are the testimony of both Budenz and Lautner which furnished the main source for the Board's findings on the formation of petitioner. Neither Budenz nor Lautner were veterans of the Spanish War nor members of petitioner (Tr. 2623, 363, 376). The Report itself recognizes that their testimony was not based on direct knowledge of events but on what they heard in Party circles.[37] In addition the Board relied on articles in the Daily Worker as furnishing evidence against petitioner. The chief instance of this is the Board's finding (R. 190-191) based solely upon the Daily Worker (P. Ex. 172) that petitioner paid homage to Stalin at the time of his death. The Board offers no legal theory for its reliance on hearsay. In a footnote it states that it does not agree with petitioner that such evidence is "technically incompetent" (R. 89). The Board states that "because of their official Party

[37] See R. 90. The fact that the Board labelled what Budenz heard in Party circles as "official Party reports" does not make it any the less hearsay.

character,"[34] Daily Worker articles are not subject to the same rules of evidence as are newspaper articles in other journals such as the New York Times or the Herald Tribune (R. 130). Assuming that the Daily Worker is the official publication of the Party, that would authorize its introduction as evidence of the Party views, but that is all. The hearsay rules of evidence apply to official Party publications and to conversations in Party circles.

The substantial evidence requirement of the Administrative Procedure Act prevents the basing of administrative orders on hearsay evidence. *Consolidated Edison Co.* v. *National Labor Relations Bd.*, 305 U. S. 197, 229; *National Labor Relations Bd.* v. *Amalgamated Meat Cutters*, 202 F. 2d 671, 673; *Willapoint Oysters* v. *Ewing*, 174 F. 2d 676, 691; *United States* v. *Watkins*, 73 F. Supp. 216, 221. Since, by its terms, the Internal Security Act places a greater evidentiary burden on the Board than on administrative agencies generally, *supra*, p. 14, the Board's reliance on hearsay was clearly error.[35].

C. Consequences of the Absence of Judicial Review, the Differences Between the Board's and Court's Principles, and the Staleness of the Record

In the court below, we pointed out that the Board's misinterpretation of the statutory criteria, distortion of the evidence, and reliance on evidence which was not connected with petitioner or was inadmissible as hearsay, required reversal of the Board's order. We pointed out that it was not appropriate for the court to consider on its own whether or not the evidence would sustain the Board's order on the basis of only appropriate standards and proper evidence, citing *N. L. R. B.* v. *Virginia Electric and Power Co.*, 314 U. S. 469; *S. E. C.* v. *Chenery Corp.*, 318 U. S. 80; *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S.

[35] One would expect that the section of the Board Report headed Discussion of Law (R. 191-203), would show some recognition of this problem. However, the question is nowhere discussed therein.

17, 20; *Democrat Printing Co.* v. *F. C. C.*, 91 App. D. C. 72, 202 F. 2d 298; *Mississippi River Fuel Corp.* v. *F. P. C.* 82 App. D. C. 208, 224; 163 F. 2d 433; *McNeil* v. *Kennedy*, 111 App. D. C. 409, 298 F. 2d 323; *Carlisle* v. *Rogers*, 104 App. D. C. 307, 262 F. 2d 19.

The court failed to follow this settled policy for the judicial review of administrative agency decisions, a policy required even more here where the strict preponderance of evidence rule is applicable. It failed to review the Board's decision in detail in a number of respects where the errors were called to its attention. It is not at all clear whether it agreed or disagreed with the Board.

The court compounded the injury to petitioner by explicitly announcing three standards different from those of the Board: first, that the Act requires a finding that "the dominant or key officers in the management of the Brigade" were representatives of the Communist Party in order to satisfy the first half of the definition of a Communist front (*supra*, p. 15); second that it is petitioner's post-Act activities that are determinative (*supra*, pp. 223-224); and third, that the purpose of an organization can be determined by proof as to who controls it (*supra*, p. 32). The Board and court differed in a number of other respects, *e.g.*, the reliance placed by the court upon a single promotional letter of April, 1952 (*supra*, p. 15) and the Board's excessive reliance upon the pre-statutory activities (*supra*, p. 28).

Unless the proceeding is to be dismissed under the preponderant evidence rule, *supra*, pp. 13-21, or for constitutional reasons, *infra*, pp. 45-55, a remand to the court would seem appropriate so that petitioner could receive the judicial review to which it is entitled. Alternatively, a remand to the Board would be required under the *Chenery* rule because it never applied the principles enun-

ciated by the court below. Chief Judge Bazelon indicated an additional reason for a remand:

> "The record was stale when the Board made its findings. In the eight years since then there have been turbulent changes in world affairs" (R. 232) and "I would remand to the Board for further hearings concerning the activities of the Brigade from the passage of the Act in 1950 to the present." (R. 232)

Petitioner and its members should not be subjected to the serious sanctions of the Act in 1964 because of activities occurring two and three decades earlier. Such subjection would be particularly serious since no member of petitioner could challenge the findings herein in proceedings subsequently directed at him. But if the Board's decision is predicated upon an ancient record the proper remedy is to dismiss the proceeding entirely. If the Government can find *contemporary* facts to support a current order it has the power to institute a new proceeding.

III. The provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face and as applied.

A. The First Amendment

In *Communist Party* v. *Subversive Activities Control Board, supra,* this Court upheld the constitutionality of the provision of the Act requiring the registration of Communist-action organizations as applied to the Communist Party. The Court recognized that the imposition of a registration requirement on an organization or an individual as a precondition to the exercise of the First Amendment rights of speech and assembly impairs those rights, 367 U. S. 1, 89; see also *Thomas* v. *Collins*, 323 U. S. 516; *Talley* v. *California*, 362 U. S. 60.

Applying the balancing doctrine (*cf. N. A. A. C. P.* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; *Shelton* v. *Tucker*, 364 U. S. 479), the Court held that the registration requirement was justified in that case because it was applied to an organization dominated by a foreign power, whose objectives were to overthrow our government by force, if necessary, and to establish a totalitarian dictatorship abroad in the foreign dominating country, 367 U. S. 1, 104-105. The validity of the order was upheld on the basis of findings by the Board, approved by the Court, that the Communist Party was substantially directed, dominated or controlled by the Soviet Union, and that its objectives were "(a) overthrow of existing government by any means necessary, including force and violence, (b) establishment of a Communist totalitarian dictatorship, (c) which will be subservient to the Soviet Union", 367 U. S. 1, 54-55.

Nothing in the opinion supports the constitutional application of the Act to an organization like the petitioner on the evidence in this record. On the contrary, the fair implication of the opinion is that the registration requirement may be constitutionally imposed only upon an organization such as the Communist Party was found to be in the *Communist Party* case. Thus the majority opinion stated at 104:

> "It is argued that if Congress may constitutionally enact legislation requiring the Communist Party to register, to list its members, to file financial statements, and to identify its printing presses, Congress may impose similar requirements upon any group which pursues unpopular political objectives or which expresses an unpopular political ideology. Nothing which we decide here remotely carries such an implication. The Subversive Activities Control Act applies only to *foreign-dominated* organizations which work primarily to advance the objectives of a world movement controlled by the government of a *foreign* country. See §§ 3(3),

> 2(4). It applies only to organizations directed, dominated, or controlled by a *particular* foreign country, the leaders of a movement which Congress has found, is 'in its origins, its development, and its present practice, * * * a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups * * *, espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization' § 2(1). This is the full purported reach of the statute, and its fullest effect."

The court below has required registration upon the basis of activities all of which constitute the exercise of First Amendment rights and all of which are totally unrelated to the objective of a totalitarian dictatorship. It is a mark of how far governmental interference with First Amendment rights has won acceptance in this country that an appellate court should find justification for a registration order in petitioner's opposition to the Internal Security Act, which is the basis for the present proceeding; in the defense of petitioner's own members under the Smith Act; in public opposition to repressive regulation, and in a consistent position against Franco and fascism. The language and tone of the opinion below show frank disapproval of the petitioner's policies. Thus, in discussing petitioner's publications, the court says:

> "The principal interest reflected by these documents is, as the Brigade says, the defense of Steve Nelson, and to a less extent of Irving Weissman. Numerous appeals for funds for these purposes were made. The prosecutors, jurors and judges were vigorously assailed. Frame-ups were charged. Next in importance appears the Brigade's antagonism to Franco. The Truman administration was charged with all sorts of misdoing in its relations with Franco. Continuous attacks on the Internal Security

> **Act, Senator McCarran, the Un-American Activities Committee, the Wall Street imperialists, and all war-mongers appear in these issues. The publication demanded cessation of the Korean War. These were clearly the principal aims of the Brigade in the post-1950 years as reflected by its official communications to its members." (R. 227)**

The court describes these activities as "aims and purposes of the Communist Party"! (R. 227).

If an organization is to be subjected to this statute as a Communist-front organization because of the lower court's disapproval of the policies just recited, Professor Chafee was correct when he warned that the statute "creates a tremendous risk of outlawing a considerable number of groups of law-abiding people with inquiring minds, engaged in furthering the same end which they believe to be in the best interests of the United States", Chafee, *The Blessings of Liberty* (1956) 155.[39]

This Court's decisions have long ago brought us to agreement with Justice Holmes that "the Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics"; *Lochner* v. *New York*, 198 U. S. 45. Are we now to be told that the First Amendment contains an even more invidious built-in approval of General Franco, the House Committee on Un-American Activities and the official viewpoint on the Korean War?

A registration order thus founded upon frank disapproval of petitioner's political views discourages not only association with the petitioner, which is protected by the

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[39] See also Professor Chafee's warning in *Comment, The Registration of "Communist-Front" Organizations in the Mundt-Nixon Bill*, 63 Harv. L. Rev. 1382, 1387 (1950), that an organization may be outlawed "when the real reason for getting rid of it is not fear of the extremists but hatred of the legitimate purposes" and Professor Sutherland's reply, *Freedom and Internal Security*, 64 Harv. L. Rev. 383, 399 (1951), stating, *inter alia*, that the President's warning on the deviation point was based upon "a strained construction of the statute".

First Amendment (*N.A.A.C.P.* v. *Alabama,* 357 U. S. 449), but also freedom of expression, fulfillment of the duties of citizenship, exercise of the right of petition to Congress, and the ability to protect one's associates in criminal and civil litigation. See *N.A.A.C.P.* v. *Button,* 371 U. S. 415. When one adds to the organization's registration the sanctions of immediate disclosure and ultimate loss of important benefits (*infra,* pp. 6a, 8a), the discouragement can only be described as devastating.

B. The Vagueness of the Statute as Applied by the Court Below

The court's decision below removes from the statutory definition of a Communist front the only specific reference in the Act which can render it definite and meaningful, *i.e.,* the objectives of the world Communist movement. Absent this reference, the phrase "aid and support" in the definition is deprived of specific meaning and can include approval of foreign aid to Poland, famine relief to China, or, as here, support to Smith Act defendants or opposition to the Internal Security Act, and, in some circles, integration of schools,[40] medical care for the aged and similar measures which have been supported by Communists from time to time. So vague and undefined a standard, particularly in the area of the First Amendment, offends due process. *Burstyn* v. *Wilson,* 343 U. S. 495; *Winters* v. *New York,* 333 U. S. 507; *Herndon* v. *Lowry,* 301 U. S. 242; *Cramp* v. *Board of Public Instruction,* 368 U. S. 278; *Baggett* v. *Bullitt,* 377 U. S. 360.

In the last two cases this Court held state loyalty oaths invalid for vagueness because they failed to define such terms as "aid to the Communist Party". In *Cramp* this Court stated (at 286):

> "Those who take this oath must swear, rather, that they have not in the unending past ever knowingly lent their 'aid', or 'support', or 'advice',

[40] See *Dombrowski* v. *Pfister, prob. juris.* noted, Oct. Term 1964, No. 54.

> or 'counsel' or 'influence' to the Communist Party. What do these phrases mean? * * * Could a lawyer who had ever represented the Communist Party or its members swear with either confidence or honesty that he had never knowingly lent his 'counsel' to the Party? Could a journalist who had ever defended the constitutional rights of the Communist Party conscientiously take an oath that he had never lent the Party his 'support'? Indeed, could anyone honestly subscribe to the oath who had ever supported any cause with contemporaneous knowledge that the Communist Party also supported it?
>
> "The very absurdity of these possibilities brings into focus the extraordinary ambiguity of the statutory language."

Moreover, a construction of the words "aid and support" as not being limited in any way by the Congressional findings as to the unlawful objectives of the world Communist movement presents this Court with a well-nigh hopeless task. For then it becomes the function of the Court to determine, without any guide from Congress, what activities "aid and support" the world Communist movement. And here the Court would truly be stepping into a "political thicket". For there are few political issues being debated today where the proponents of either side do not argue that the position of their opponents gives aid and support to the world Communist movement. To the opponents of the integration of schools or other measures to eliminate discrimination against the Negro people, these measures are directly aimed at supporting the "Communist conspiracy". The proponents of these measures argue, on the other hand, that these anti-discrimination measures are essential to combat the influence of Communism both home and abroad because Communists utilize our practice of discrimination against the Negro people to advance Communist purposes. To the Board, opposition to the Internal Security Act gives aid and support to the world Communist movement. Yet President Truman vetoed the Act because he considered it

a danger to our institutions. H. Doc. 708, 81st Cong. 2d Sess., see also H. Doc. 679, 81st Cong. 2d Sess. pp. 5-6.[41]

How is a conscientious court to choose among these alternatives? It can only define the terms, "aid and support", in accordance with its own political predilections which may or may not accord with the Board's, thus leaving the phrase with no standard or context except the political views of the tribunal deciding each case.

There is no reason to believe that Congress meant to leave the net so wide and undefined or that it desired the courts to construe the statute so as to render it unconstitutional. And under the Act, as construed to meet constitutional requirements, the order cannot stand.

The vagueness in the instant case is compounded by the subjective test which the lower court posed when, in discussing "objectives which are objectives of the Communist Party" (R. 228), it inquired as to the motivation for adopting those objectives. Since such motivation is not—at least in this case—the subject of direct evidence but is inferred by the Court, there is a total absence of precision in an area protected by the First Amendment.

C. The Order Below, Predicated Upon Events Antedating the Statute, Denies Due Process and Violates the *Ex Post Facto* Provision of the Constitution

There is no evidence that since the date of the Act, petitioner's managers have been Communist representa-

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[41] To many, including Justices of this Court, opposition to the Smith Act or the Internal Security Act does not aid and support the world Communist movement, but on the contrary strengthens the United States in its competition with Communism. The Board's approach in the present case leads directly to the type of attack made recently by Senator Eastland when he prepared a score card on "pro-Communist" votes of Justices of this Court. 108 Cong. Rec. 7027-31, May 2, 1962. But see the reply of Senator Javits that the criterion for this chart was Senator Eastland's but not necessarily that of other Senators or of the Senate as a whole. *Id.* at 7031.

tives or that petitioner's activities have not been those of peaceful positions on political matters including legislation, support of its members improperly charged with political crime, and self-help in this proceeding.

The order below is predicated upon the Board's open reliance upon the pre-statutory activities of petitioner and upon the court's acquiescence in that reliance upon a more sophisticated theory of "context" or "coloration" (R. 228). In either case, petitioner has been adjudged a Communist front not because of what it was from 1950 to 1955, but because what it and others did in the years 1936-1949. See *United States* v. *Oregon Medical Society*, 343 U. S. 326, 334. Aside from this disregard of statutory intent, *supra*, p. 44, such an order denies due process and violates the *ex post facto* provision of the Constitution. See *White* v. *United States*, 191 U. S. 545, 552; *Shreveport* v. *Cole*, 129 U. S. 36; *Cummings* v. *Missouri*, 4 Wall. (71 U. S.) 277, *Ex parte Garland*, 4 Wall (71 U. S.) 333; *Pierce* v. *Carskadan* 16 Wall (83 U. S.) 284; *Burgess* v. *Salmon*, 97 U. S. 381. It requires registration and imposes sanctions and disabilities upon petitioner and its members not on the basis of what petitioner is, but on the basis of what it is imputed to have been. This is to "punish that individual for past activities" since it cannot be said to be "a regulation of a present situation", *De Veau* v. *Braisted*, 363 U. S. 144, 160 (plurality opinion); *Flemming* v. *Nestor*, 363 U. S. 603, 613. It shows a purpose "to reach the person, not the calling", *Cummings* v. *Missouri*, *supra*, p. 320. This is not "the mere denial of a non-contractual benefit", *Flemming* v. *Nestor*, 363 U. S. at 617; rather "affirmative disability [and] restraint is imposed", *ibid.* Thus, the statute goes far beyond what this Court approved by a divided vote in *American Communications Association* v. *Douds*, 339 U. S. 382 and in *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1.

D. The Board's Order Denies Due Process Because it Relied in This Proceeding Upon its Findings in the *Communist Party* case

Petitioner cannot be found to be a Communist front in the absence of a finding that the Communist Party was a Communist-action organization. The Board held, however (R. 201-202), that its prior determination in the *Communist Party* case that the Party was a Communist-action organization was "binding and conclusive" on petitioner. However, since petitioner was not a party to the *Communist Party* case, this finding is a denial of due process. *Hansberry* v. *Lee,* 311 U. S. 32; *Kirby* v. *United States,* 174 U. S. 47. Since the bar is a constitutional one, it is not removed by the Board's claim that its contrary holding is "a reasonable construction of the Act" (R. 202).

The argument of the Board that the finding in the *Party* case is binding on petitioner because of the "intimate relationship" between the two is on its face unsound. The finding in the *Party* case could be made binding on petitioner only if petitioner were a constituent part of the Party. The Board made no such finding and obviously could not do so, because its whole theory is that the Party and petitioner are separate and distinct organizations.

The Board's compliance with the requirements of due process would not have obstructed the proper enforcement of the Act. The Board could have made petitioner, as an alleged front, a party to the original proceeding against the Communist Party which would have avoided any duplication of evidence and permitted a joint decision on both Communist-action and Communist-front organizations. Alternatively, having made the error of proceeding separately against the Communist Party, the Board could have instituted the within proceeding against petitioner but offered evidence to show that the Communist Party was an action organization.

Finally, the determination that the Communist Party was a Communist-action organization was made for a prior

period. There is no determination that it was a Communist-action organization as of the time of the order against petitioner.

E. The Act is Invalid as Applied Because it Conflicts With the Privilege Against Self-Incrimination

In *Communist Party* v. *S.A.C.B., supra,* at 105-10 a bare majority of the Court refused to determine as premature the Communist Party's contention that the Communist action provisions of the Act are invalid because they would impair the privilege against self-incrimination of the Communist Party's officers. In the light of the reasons stated in the dissenting opinions of Justices Douglas and Brennan and the subsequent history of the *Communist Party* case, we request the Court to reconsider this aspect of the decision.

The failure of the Communist Party to register has thus far been sustained on the ground of the constitutional privilege against self-incrimination of its officers. See *Communist Party* v. *United States,* 331 F. 2d 897, *cert. den.,* 377 U. S. 968, *sub nom United States* v. *Communist Party.* It is unreasonable to require the registration of and to impose disabilities upon a "Communist-front" organization when the so-called parent organization, the communist-action organization, is relieved of the need to register.

F. The Act is Invalid Because of the Sanctions That it Imposes Upon Petitioner and its Members

The substantiality of the sanctions imposed upon petitioner and its members are obvious, *infra,* pp. 6a-11a, 14a. In the *Communist Party* case, this Court declined to consider those sanctions as premature. All of those sanctions are still operative with the single exception of the passport provision held unconstitutional by this Court in *Aptheker* v. *The Secretary of State,* 378 U. S. 500. It is respectfully submitted that this Court erred in not consid-

ering these sanctions in the *Communist Party* case and that, in any event, it would be error to continue that policy where the registration proceeding is directed against an organization whose purposes are not claimed to be the sinister ones attributed to Communist-action organizations. Therefore, for the reasons urged by the Communist Party in the original *Communist Party* case, we urge that in determining the validity of the Act this Court consider the impact upon the petitioner and upon its individual members of the various sanctions imposed by this statute.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed with directions to set aside the order of the Board.

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October 6, 1964.

APPENDIX

Statute Involved

Pertinent provisions of the Subversive Activities Control Act of 1950 (which is Title I of the Internal Security Act of 1950), as amended, 64 Stat. 987, 50 U.S.C. 781, et seq., are as follows. (The Act's section numbers are followed by the appropriate section numbers of 50 U.S.C. in brackets.)

Sec. 1(b) [798]. Preservation of certain rights.

Nothing in this chapter * * * shall be construed to authorize, require, or establish military or civilian censorship or in any way to limit or infringe upon freedom of the press or of speech as guaranteed by the Constitution of the United States and no regulation shall be promulgated under said subchapter and sections having that effect. Sept. 23, 1950, Title I, § 1(b), 64 Stat. 787.

Sec. 2 [781]. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that—

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative

form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of the world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and pro-

mote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6) of this section, such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts," which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of Communist members, representatives, and agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement.

(9) In the United States those individuals who knowingly and wilfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

(10) In pursuance of Communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above, already caused the establishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The agents of Communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

(12) The Communist network in the United States is inspired and controlled in large part by foreign agents who are sent into the United States ostensibly as attaches of foreign legations, affiliates of international organizations, members of trading commissions, and in similar capacities, but who use their diplomatic or semi-diplomatic status as a shield behind which to engage in activities prejudicial to the public security.

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow

of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

Sec. 3 [782]. For the purposes of this title—

* * * * *

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist-action organization" means—

(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of

this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; and

(b) any section, branch, fraction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

* * * * *

Sec. 5 [784]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title, is registered or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful—

(1) For any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(A) in seeking, accepting, or holding any non-elective office or employment under the United States, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) to hold any non-elective office or employment under the United States; or

(C) in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(D) if such organization is a Communist-action organization, to engage in any employment in any defense facility; or

(E) to hold office or employment with any labor organization, as that term is defined in section 2(5) of the National Labor Relations Act, as amended (29 U.S.C. 152), or to represent any employer in any matter or proceeding arising or pending under the Act.

(2) For any officer or employee of the United States or of any defense facility, with knowledge or notice that such organization is so registered or that such order has become final—

(A) to contribute funds or services to such organization;

* * * * *

(b) The Secretary of Defense is authorized and directed to designate and proclaim, and from time to time revise, a list of facilities, as defined in paragraph (7) of section 3 of this title, with respect to the operation of which he finds and determines that the security of the United States requires the application of the provisions of subsection (a) of this section. The Secretary shall promptly notify the management of any facility so listed; whereupon such management shall immediately post conspicuously, and thereafter while so listed keep posted, notice of such designation in such form and in such place or places as to give reasonable notice thereof to all employees of, and to all applicants for employment in, such facility. Such posting shall be sufficient to give notice of such designation to any person subject thereto or affected thereby . . .

Sec. 6 [785]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title is registered, or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful for any member of such organization, with knowledge or

notice that such organization is so registered or that such order has become final—

(1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or

(2) to use or attempt to use any such passport.

* * * * *

Sec. [786].

* * * * *

(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

* * * * *

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

(1) The name of the organization and the address of its principal office.

(2) The name and the last-known address of each individual who is at the time of filing of such registration statement, and of each individual who was at any time during the period of twelve full calendar months next preceding the filing of such statement, an officer of the organization, with the designation or title of the office so held, and with a brief statement of the duties and functions of such individual as such officer.

(3) An accounting, in such form and detail as the Attorney General shall by regulations prescribe, of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full calendar months next preceding the filing of such statement.

* * * * *

(5) In the case of any officer or member whose name is required to be shown in such statement, and who uses or has used or who is or has been known by more than one name, each name which such officer or member uses or has used or by which he is known or has been known.

(6) A listing, in such form and detail as the Attorney General shall by regulation prescribe, of all printing presses and machines including but not limited to rotary presses, flatbed cylinder presses, platen presses, lithographs, offsets, photo-offsets, mimeograph machines, multigraph machines, multilith machines, duplicating machines, ditto machines, linotype machines, intertype machines, monotype machines, and all other types of printing presses, typesetting machines or any mechanical devices used or intended to be used, or capable of being used to produce or publish printed matter or material, which are in the possession, custody, ownership, or control of the Communist-action or Communist-front organization or its officers, members, affiliates, associates, group, or groups in which the Communist-action or Communist-front organizations, its officers or members have an interest.

(e) It shall be the duty of each organization registered under this section to file with the Attorney General on or before February 1 of the year following the year in which it registers, and on or before February 1 of each succeeding year, an annual report, prepared and filed in such manner and form as the Attorney General shall by regulations

prescribe, containing the same information which by subsection (d) is required to be included in a registration statement, except that the information required with respect to the twelve-month period referred to in paragraphs (2), (3), or (4) of such subsection shall, in such annual report, be given with respect to the calendar year preceding the February 1 on or before which such annual report must be filed.

(f) (1) It shall be the duty of each organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records and accounts of moneys received and expended (including the sources from which received and purposes for which expended) by such organization.

* * * * *

Sec. 9 [788]. (a) The Attorney General shall keep and maintain separately in the Department of Justice—

* * * * *

(2) a "Register of Communist-Front Organizations", which shall include (A) the names and addresses of all Communist-front organizations registered under section 7, and (B) the registration statements and annual reports filed by such organizations thereunder.

(b) Such registers shall be kept and maintained in such manner as to be open for public inspection . . .

* * * * *

Sec. 10 [789]. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or determining that it is a Communist-infiltrated organization, or for any person acting for or on behalf of any such organization—

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of

interstate or foreign commerce, any publication which is intended to be, or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name or the organization appearing in lieu of the blank: "Disseminated by ....., a Communist organization"; or

(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by ....., a Communist organization."

Sec. 11 [790]. (a) Notwithstanding any other provisions of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

(b) No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

* * * * *

Sec. 13 [792]. (a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this title is in fact required to register under such section, he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

* * * * *

(f) In determining whether any organization is a "Communist-front organization", the Board shall take into consideration—

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

(1) that an organization is a Communist-action organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order requiring such organization to register as such under section 7 of this title; . . .

* * * * * *

Sec. 15 [793]. (a) The party aggrieved by any order entered by the Board under subsection (g), (h), (i), or (j) of section 13, or subsection (f) of section 13A, may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides. The findings of the Board as to the facts, if supported by the preponderance of the evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such addi-

tional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence shall be conclusive, and its recommendations, if any, with respect to action in the matter under consideration. . . .

* * * * *

Sec. 15 [784]. (a) If there is in effect with respect to any organization or individual a final order of the Board requiring registration under section 7 or section 8 of this title—

(1) such organization shall, upon conviction of failure to register, to file any registration statement or annual report, or to keep records as required by section 7, be punished for each such offense by a fine of not more than $10,000, and

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

(b) Any individual who, in a registration statement or annual report filed under section 7 or section 8, willfully

makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall upon conviction thereof be punished for each such offense by a fine of not more than $10,000, or by imprisonment for not more than five years, or by both such fine and imprisonment. For the purposes of this subsection—

(1) each false statement willfully made, and each willful omission to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall constitute a separate offense; and

(2) each listing of the name or address of any one individual shall be deemed to be a separate statement.

(c) Any organization which violates any provision of section 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000. Any individual who violates any provision of sections 5, 6, or 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000 or by imprisonment for not more than five years, or by both such fine and imprisonment.

Sec. 16 [795]. Nothing in this title shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, by the Board under this title.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 65

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,

Petitioner,

—v.—

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent.

No. 44

AMERICAN COMMITTEE FOR PROTECTION OF THE FOREIGN BORN,

Petitioner,

—v.—

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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ARGUMENT:

POINT I—

The requirement of the Subversive Activities Control Act that Communist-front organizations register, violates the First Amendment on its face, and as applied to petitioners. The decision of this Court in *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1 (1961) is narrowly drawn to hold constitutional only the provisions respecting Communist-action organizations, as applied to the Communist Party of the United States. The holding of constitutionality was based expressly on findings that the Communist Party was directly and deeply involved with what Congress found to be a foreign revolutionary threat against the existence of the United States government. Since no such relationship has been demonstrated with respect to alleged Communist-front organizations, the First Amendment commands a holding of unconstitutionality. This Court eschewed any holding of the constitutionality of the Communist-front registration provisions, carefully limiting its holding to the constitutionality of the registration of Communist-action organizations. The Court of Appeals erred in assuming that this Court saw no constitutional distinction between the two. The Court of Appeals' decisions in the Communist-front

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In the

Supreme Court of the United States

October Term, 1964

Nos. 65 and 44

Veterans of the Abraham Lincoln Brigade,

Petitioner,

—v.—

Subversive Activities Control Board,

Respondent.

American Committee for Protection of the Foreign Born,

Petitioner,

—v.—

Subversive Activities Control Board,

Respondent.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus*

The American Civil Liberties Union is a non-profit, non-partisan membership corporation that has been engaged for forty-four years solely in the defense of the Bill of Rights. The Union files this brief, with consent of the parties on file with the Clerk, because it believes the Subversive Activities Control Act, Title I of the Internal Security Act of 1950, stands as a monument of infidelity to the American tradition of political freedom. Its purpose and

effect is to remove from the people their right to judge ideas on their merits and to empower the Government to label ideas as noxious by relying on their source alone.

Moreover, the American Civil Liberties Union believes the Act is unconstitutional. *Amicus* so argued on both occasions that the Act was before this Court in *Communist Party* v. *Subversive Activities Control Board,* 351 U. S. 115 and 367 U. S. 1. The statute, however, was held valid insofar as it required the Communist Party to register as a Communist-action organization. While we disagree with that judgment, we urge here that no matter how the law may deal with the Communist Party, it cannot proscribe other organizations by labeling them Communist-fronts, thus driving them from the marketplace of ideas. Otherwise we lay ourselves open to the same evils from which this oppressive legislation pretends to deliver us.

We join with former President Truman who said in his message to Congress vetoing this Act, that "The application of the registration requirements to so-called Communist-front organizations can be the greatest danger to freedom of speech, press and assembly, since the Alien and Sedition Laws of 1798."

Statement of the Case

Petitioners, after hearings held before the Subversive Activities Control Board, were found to be Communist-front organizations under Section 3(4) of the Subversive Activities Control Act of 1950, 50 U. S. C. §782(4), and were ordered to register pursuant to Section 7(b) of the Act, 50 U. S. C. §786(6). Because this brief is concerned entirely with the constitutionality of the Act on its face, it is unnecessary to repeat the facts which are set forth in the briefs of the parties. The brief does make occasional ref-

erences to the record in the Veterans of the Abraham Lincoln Brigade case, but the law that we urge on the Court applies equally to both petitioners.

If the orders to register are upheld, petitioners and their members will be harshly penalized solely for engaging in activities that, beyond any doubt, are protected by the First Amendment. In addition to the stigmatization imposed by the fact of registration alone, Section 5 of the Act (50 U. S. C. §784) debars members from any non-elective office or employment under the United States, prohibits their employment by labor unions, and prohibits employees of the government or of a privately owned "defense facility" from contributing funds or services to the organization. The organization will be required, pursuant to Section 7 of the Act (50 U. S. C. §786), to file an annual report which is to contain a list of all its officers, an accounting of all moneys received and expended during the preceding year, and a list of all machinery in its possession or control that is capable of being used to produce or publish printed matter or material.

Under Section 10 (50 U. S. C. §789), each registered Communist-front organization is forbidden to transmit in the mails any publication intended to be circulated among two or more persons, unless the publication and its wrapper bear the notice—"Disseminated by ....., a Communist organization." Likewise, no such organization may broadcast any matter over radio or television unless it is announced that "The following program is sponsored by ....., a Communist organization."

Pursuant to Section 11 of the Act (50 U. S. C. §790) contributions to an organization required to register as a Communist-front may not be deducted for Federal income-tax purposes, nor is the organization entitled to Federal tax exemption.

Summary of Argument

I. The Communist-front provisions of the Subversive Activities Control Act are profoundly different in a constitutional sense than the Communist-action provisions held constitutional in *Communist Party* v. *Subversive Activities Control Act,* 367 U. S. 1. That difference consists in the fact that a Communist-action organization is under the control and domination of a foreign power. A Communist-front organization, however, has no such foreign ties and cannot, therefore, be burdened with the limitations that the Act imposes on First Amendment freedoms. This distinction is made express in the Congressional findings that introduce the Act, and in the statute's definitions and criteria. Likewise, this qualitative distinction was expressly recognized both by this Court and the Court of Appeals in *Communist Party* v. *Subversive Activities Control Board.* The distinction between organizations with direct foreign ties and those without such ties is of a magnitude that, in the application of the "balancing" test, tips the scale in favor of the preservation of the guarantees contained in the first amendment.

II. *Amicus,* however, disagrees that the balancing test is consistent with the authentic meaning of the First Amendment. In the context of this case, the best standard is that expressed in *De Jonge* v. *Oregon,* 229 U. S. 353, which holds that while there may be some circumstances in which the government may have a legitimate concern over *what* is said, it is commanded by the First Amendment to be wholly disinterested in who says it.

III. The provisions of the Act that define a Communist-front organization and establish the criteria to be used to determine whether an organization shall be so labeled, are unconstitutionally vague and uncertain; they encompass a limitless range of acts and omissions. The holdings of the Supreme Court in *Gramp* v. *Board of Public Instruction,*

368 U. S. 278, and *Baggett* v. *Bullitt*, 377 U. S. 360, are on all fours with the case at bar and require the conclusion that the Act offends due process of law. This conclusion is particularly indicated where the statute at the same time inhibits the freedoms protected by the First Amendment.

ARGUMENT

POINT I

The requirement of the Subversive Activities Control Act that Communist-front organizations register, violates the First Amendment on its face, and as applied to petitioners. The decision of this Court in *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1 (1961) is narrowly drawn to hold constitutional only the provisions respecting Communist-action organizations, as applied to the Communist Party of the United States. The holding of constitutionality was based expressly on findings that the Communist Party was directly and deeply involved with what Congress found to be a foreign revolutionary threat against the existence of the United States government. Since no such relationship has been demonstrated with respect to alleged Communist-front organizations, the First Amendment commands a holding of unconstitutionality. This Court eschewed any holding of the constitutionality of the Communist-front registration provisions, carefully limiting its holding to the constitutionality of the registration of Communist-action organizations. The Court of Appeals erred in assuming that this Court saw no constitutional distinction between the two. The Court of Appeals' decisions in the Communist-front cases are likewise inconsistent with its own prior decision in the *Communist Party* case, where the distinction received considerable recognition.

In *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1 (1961), this Court upheld the constitutionality of the provisions of the Subversive Activities Control Act which require the registration of Communist-action organizations, and their specific application to the Communist Party of the United States. The two cases to which this brief *amicus curiae* is addressed, present the first occasion for the consideration by this Court of the constitutional limits on the registration requirements as applied not to the Communist Party, nor to any other Communist-action organization, but to alleged Communist-front organizations.

There is a profound and constitutionally-significant difference between Congress' constitutional power with respect to a Communist-action organization and its power with respect to a so-called Communist-front organization. The essence of this difference is that a Communist-action organization is by definition an integral part of what Congress has found to be the world Communist movement which is directly under the control and domination of a foreign power. Conversely, no such attribution can be or has been made, consistent with the constitutional protections of the First Amendment, to alleged Communist fronts.

The Court of Appeals for the District of Columbia is the only Court which has ruled on the constitutionality of the registration provisions for both categories of organizations. In the *Communist Party* case,[1] after considerable constitutional analysis and discussion, the Court of Appeals upheld the statute. In the two cases which are the subject of this brief, the Court of Appeals held the Communist-front registration provisions to be constitutional, but these holdings, as appears below, were bare of

[1] *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531; 254 F. 2d 314; 277 F. 2d 314; 277 F. 2d 78.

any constitutional discussion at all, much less any persuasive analysis.

In the *Communist Party* case, the Court of Appeals expressly found[2] on the basis of the record before the Subversive Activities Control Board that the Communist Party's objectives were 1) the overthrow of the United States government by force and violence; 2) the establishment in the United States of a Communist totalitarian dictatorship; and 3) the subservience of such totalitarian dictatorship to the Soviet Union. This Court expressly affirmed the tripartite finding.[3]

Both this Court and the Court of Appeals recognized that the statute infringed on First Amendment rights.[4] However, the infringement was held constitutionally permissible in the case of the Communist Party because the First Amendment, in the view of the judges subscribing to the majority opinions in this Court and the Court of Appeals, must yield to the necessity of self-preservation when the government is directly confronted with a threat of forcible overthrow by the Soviet Union.

No such findings of direct foreign domination and control, and dedication to and pursuit of forcible overthrow, were made with respect to Communist-front organizations either in general by Congress, or with respect to petitioners by the Board. Consequently, whatever constitutional justifications may have existed for validating the registration provisions of the Act insofar as they concern the Communist Party or Communist-action organizations in

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[2] 254 F. 2d 314, 319.

[3] 367 U. S. 1, 55-56.

[4] 367 U. S. 1, 89, 90, 96, 102 and 223 F. 2d 531, 544. See discussion on this point, *infra*, at pp. 18-19, 24-25.

general, such justifications are conspicuously absent with respect to the so-called Communist-front organizations.

This distinction pervades the statute, the findings of the Board, and the lengthy opinions of Mr. Justice Frankfurter and Circuit Judge Prettyman upholding the statute as applied to the Communist Party. But the opinions of Judge Prettyman in the two cases at bar, as well as the other "front" cases, fail to recognize this vital constitutional distinction. They are therefore sharply out of phase with the opinions in the *Communist Party* case.

This section of the brief presents the evidence of these distinctions in the statute itself, their recognition by the Court of Appeals and this Court in the *Communist Party* case, and our critique of the decisions of the Court of Appeals in the "front" cases. We conclude by showing that this argument, both expressly and by implication, has been recognized by this Court in other decisions involving the constitutional power of Federal and State governments to legislate in the area of First Amendment freedoms.

A. The distinction in the statute.

1. *Congressional findings.*

Of the 15 specifications of Congressional findings of "Necessity for legislation",[5] *only one* makes any reference to Communist-front organizations.[6] It is significant that this very finding concedes that Communist-front organizations have members and supporters who in fact do not support the Communist objectives of forcible overthrow and establishment of a Communist totalitarian dictatorship

[5] Act, §2; 50 U. S. C. §781.

[6] Act, §2(7); 50 U. S. C. §781(7).

The last sentence of the seventh finding reads: "One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of and the

subservient to the Soviet Union.[7] It follows that to brand an organization a "Communist-front" stigmatizes persons twice removed from the category of Communists. Persons who are not Communist Party members or even conscious supporters, but merely members or supporters of an organization whose alleged relationship with a Communist-action organization was not apparent to them; or it may include persons whose membership in or support of the alleged Communist-front organization was based on issues or activities or relationships quite apart from questions of Communism; or it may refer to persons to whom the entire question of shades of Communism or non-Communism was a matter of indifference.[8] But in any event, the Congressional finding is clear that there are such persons in Communist-front organizations—persons without knowledge of what Congress has found to be "the true purposes of and the actual nature of the control and influence exerted upon such 'Communist fronts'."[9]

That these persons at least are protected by the Constitution is made clear by the decision of the Supreme Court

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actual nature of the control and influence exerted upon such 'Communist fronts.' ".

[7] The court below, in the companion case *National Council of American-Soviet Friendship* v. *Subversive Activities Control Board*, which set aside a Board registration order, recognized that there were "a considerable number of individuals who by statutory definition did not know that these directors were Communist Party operatives." 322 F. 2d 375, 382.

[8] This is especially true of the Veterans of the Abraham Lincoln Brigade. Other than the Veterans there was no organization for returning Spanish Civil War volunteers to join. Indeed the Board has admitted that it was unable to identify more than seventy of petitioner's several hundred members as having been Communist Party members at any time (R. 199). This concession is an extremely apt illustration of the unconstitutionality of the seventh finding. Not only some of its members, but apparently a decisive majority, cannot be said to have scienter. To put the entire episode in its historical context, see Thomas, *The Spanish Civil War* (1961).

[9] See note 7, *supra*.

in *Wieman* v. *Updegraff*, 344 U. S. 183, 190-191. In *Wieman*, Mr. Justice Clark, for a unanimous court, wrote that:

> "• • • [U]nder the statute before us, the fact of membership alone disqualifies. If the rule be expressed as a presumption of disloyalty, it is a conclusive one.
>
> "But membership may be innocent. A state servant may have joined a proscribed organization unaware of its activities and purposes • • •. At the time of affiliation, a group itself may be innocent • • •. Conversely, an organization formerly subversive and therefore designated as such may have subsequently freed itself from the influences which originally led to its listing.
>
> "• • • Yet under the Oklahoma Act, the fact of association alone determines disloyalty and disqualification; it matters not whether association existed innocently or knowingly. To thus inhibit individual freedom of movement is to stifle the flow of democratic expression and controversy at one of its chief sources • • •. Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power."

In the words of *Wieman* v. *Updegraff*, Congressional finding No. Seven is an "indiscriminate classification of innocent with knowing activity." It authorizes the harmful Communist-front brand in the absence of any evidence of scienter on the part of members or supporters. Indeed, it goes further. In *Wieman*, it was logically possible that all members of the proscribed organization possessed the "guilty" knowledge of their association. But the Internal Security Act authorizes such harmful branding notwithstanding the fact that the statute itself recognizes that the organization contains members who are innocent.

Aptheker v. *Secretary of State*, 378 U. S. 500 (1964), makes this point very explicitly in the context of the statute at bar:

> "The prohibition against travel [in Section 6 of the Control Act] is supported only by a tenuous relationship between the bare fact of organizational membership and the activity Congress sought to proscribe. The broad and enveloping prohibition indiscriminately excludes plainly relevant considerations such as the individual's knowledge, activity, commitment and purposes in and places for travel."

Virtually all the other findings, and the findings read as a whole, bristle with references to the danger of forcible overthrow of the United States government and its replacement by a totalitarian dictatorship subservient to that of the Soviet Union, all as a result of the revolutionary conspiratorial objectives and tactics of the world Communist movement whose "direction and control * * * is vested in and exercised by the Communist dictatorship of a foreign country."[10] Communist action organizations are established in various countries, the Congressional findings continue, as "sections of a world-wide Communist organization,"[11] controlled, directed and subject to the discipline of the Soviet government. And, according to Finding No. Six:

> "The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if neces-

[10] Act, §2(4); 50 U. S. C. §781(4).

[11] Act, §2(5); 50 U. S. C. §781(5).

> sary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves." [12]

Conversely, whatever else a "front" organization may be, it does not have the foregoing attributes of a Communist-action organization. Finding No. Seven, when placed in the context of the other findings, and particularly Finding No. Six, demonstrates that a "front" must be something other, and less evil, than an organization which uses force to set up a Communist totalitarian dictatorship. Findings Nos. Six and Seven, read together, suggest yet another difference, that between the deceivers and the deceived, the dupers and the duped. If there is no difference between the two kinds of organizations, Congress would not have made the distinction.

Furthermore, while the membership of a Communist-action organization, according to Congress, is consciously participating in violent revolutionary means and goals, a significant portion of the membership of a front organization is free of this taint. To argue otherwise is to ignore the distinctions drawn by Congress. One cannot have it both ways. If they are different, the difference must be

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[12] Act, §2(6); 50 U. S. C. §781(6).

in qualitative terms. This qualitative difference has constitutional consequences.

2. *Statutory definitions.*

Compatible with the findings, there is a vast difference in the statutory definition of Communist-action organization[13] and Communist-front organization.[14] Each definition has what may be called a "control" component, and an "operations" component. But there the similarity ends. In the first instance, while a Communist-action organization is by definition "substantially directed, dominated or controlled by the Soviet Union," a Communist-front organization is defined as controlled not by a foreign power, but by a Communist-action organization. In the second instance, while a Communist-action organization is by definition one which "operates primarily to advance the objectives of such world Communist movement", a Communist-front organization's operations are, by definition, "for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement."

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[13] "The term 'Communist-action organization' means

(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in said section." Act, §3(3)(a); 50 U. S. C. §782(3)(a).

[14] "The term 'Communist-front organization' means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title." Act, §3(4); 50 U. S. C. §782(4).

Thus, in both segments[15] of the respective definitions, a Communist-front organization is at least one dimension away from a Communist-action organization. By definition, a Communist-action organization is controlled by the Soviet Union, and a Communist-front organization is at most only indirectly and through the intermediary of a Communist-action organization, related to the foreign power bent on forcible overthrow. By definition, a Communist-action organization operates to advance the objectives of world Communism, to wit, forcible overthrow, etc., but a Communist-front organization does not. By definition, the Communist-front organization acts not to "advance the objectives", but merely to "aid and support".

Furthermore, the definition of Communist-front organization is met by an organization whose "aid and support" is not directly linked to the Soviet Union, but only indirectly, through the intermediary of a Communist-action organization. Consequently, as concerns the "operations" component, a Communist-front organization may well be not one but two dimensions apart from a Communist-action organization: 1) It is not itself engaged in the realization of Soviet objectives, but merely gives "aid and support"; and 2) such "aid and support" may well be to a Communist-action organization, rather than to the foreign power itself.[16]

3. *Statutory criteria.*

Additional evidence of these vital distinctions is contained in the broad differences in criteria for determination of Communist-action organizations[17] and Communist-front

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[15] The conjunctive "and" is used in both definitions. Therefore the determination of any issue resting on the definition must take into account the aggregate effect of both the "control" component and the "operations" component.

[16] Notes 13 and 14, *supra*.

[17] Act, §13(c); 50 U. S. C. §782(c).

organizations.[18] There are eight criteria for the determination of a Communist-action organization, two of which are similar to two of the four criteria for determination of a Communist-front organization.[19] A comparison of the criteria demonstrates once again that where Communist-action organizations are concerned, the statute revolves around specific foreign-directed revolutionary aims of forcible overthrow.[20] Where Communist-front organizations are concerned, however, the standards are nebulous, vague,[21] general, and not related to these aims, except through the necessary intermediary of a Communist-action organization.[22] Much more significantly, however, the Communist-front organization criteria are all decidedly in the speech sector of the speech-action continum.[23]

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[18] Act, §13(f); 50 U. S. C. §792(f). See pp. 43-44, *infra*.

[19] Communist-action organization criterion 2, §13(e)(2), dealing with non-deviation, resembles Communist-front organization criterion 4, §13(f)(4). Communist-action organization criterion 3, §13(e)(3), dealing with receipt of financial and other support, is similar, in part, to Communist-front organization criterion 2, §13(f)(2).

[20] Specifically, criterion 1 refers to directives of a foreign government; criterion 4 to foreign instruction; criterion 5 to reports to a foreign government; criterion 6 to subjection to disciplinary power of a foreign government; criterion 7 to various surreptitious devices for the purpose of concealing foreign direction; and criterion 8 to foreign allegiance.

[21] See discussion of vagueness in Point III, *infra*.

[22] Just as "foreign" is the key word in the criteria of §13(e), "Communist-action organization" are the key words in the criteria of §13(f). There is nothing in any of the §13(f) criteria referring to foreign directives, instruction, reports, discipline, or allegiance.

[23] By the defining effect of these criteria, a Communist-front organization does not receive and execute foreign directives; does not send its people abroad for instruction; does not report to a foreign government; is not involved with allegiance to and discipline by a foreign government. The activities that fit into the Communist-front organization criteria are speech and association, and things ancillary thereto such as organization, membership and finances.

4. Constitutional significance of these statutory distinctions.

The respondent's reply to *Amicus'* brief in the court below sought to minimize these distinctions by imputing to us the claim that "when [the Party] acts through a controlled instrumentality in which the word 'Communist' does not appear . . . its privacy is constitutionally protected" (p. 3). That, obviously, is not the claim at all. Rather, the argument is directed towards the differences acknowledged by Congress in the three substantive elements of the statute: the stated purposes, the definitions, and the criteria. Assume, for example, a third category of organizations which bear the same statutory relationship to Communist-front organizations as Communist-front organizations bear to Communist-action organizations. Are such hypothetical organizations and their members to have no greater First Amendment protection than the conspiratorial, revolutionary, force and violence-bent Communist Party itself? According to the Subversive Activities Control Board, the answer is no, since its reply to *Amicus'* brief below suggests "by parity of reasoning" that the stigma of registration could be constitutionally applied to such organizations.

How far can the Board go, compatible with the constitutional power it derives from Congress, with this "holding company" concept? There must be some point beyond which the constitutional power to restrict the free speech of Communist-action revolutionaries cannot be stretched. But the Board would make this a limitless power, subject only to its own fallible findings. There are those in and out of government who would include such organizations as Women's Strike for Peace, the Socialist Party, the National Association for the Advancement of Colored People, The American Jewish Congress, the Americans for Democratic

Action, and *Amicus* itself, within the rubric of "Communist". These organizations would be the first to admit that there are certain issues on which they could be brought within the "non-deviation" criteria. Is the only determinant to be whether or not a majority of the Board make the requisite findings, and a majority of the reviewing courts approve it? There must be a constitutional limit reached at some point as one travels from the Communist-action revolutionary nucleus, outwards into other organizations and groupings. *Amicus* contends that the so-called Communist-fronts are beyond that limit.

B. The distinction in the courts.

Both this Court and the Court of Appeals have amply demonstrated, in their decisions in *Communist Party* v. *Subversive Activities Control Board*, the critical importance of foreign control as a prerequisite to the constitutionality of the Act under the First Amendment. But the Court of Appeals has erroneously cast all of this aside in its decisions in the "front" cases.

1. *The Court of Appeals in the* Communist Party *case.*

Judge Prettyman, in addition to delineating the Congressional findings, repeated a considerable amount of the historical and other findings made by the Board, beginning with the formation of the Russian Communist Party in 1898.[24] Throughout these findings there are numerous explicit references to control of the American Communist Party by the Soviet Union and its adherence to the objectives of forcible overthrow.[25]

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[24] 223 F. 2d 531, 566.

[25] For example:

> "The crucial factor in the statute before us is the aim, spelled out in detail, of the world Communist movement to disestablish our system of government." Id. at 560. "The

Judge Prettyman's opinion calls on American historical precedents to illustrate the power of our government to ensure its own self-preservation. "Antipathy to domination or control by a foreign government * * * is a basic policy in this nation." References are made to the Articles of Confederation, the Constitutional Convention, the Genet Affair, the War of 1812, the League of Nations, "such qualms as there are concerning the United Nations", all with a view to demonstrate that "This country has always unequivocally repudiated any action which has seemed to contain the element of foreign control over our governmental affairs."[26]

But at the same time that the Court of Appeals reaffirmed the prerogative of self-preservation, it recognized that the statute "will interfere with freedoms of speech and assembly" since "realistically the registration and sanction provisions will exert restriction upon what otherwise might be a wider latitude of expression."[27] However, "[T]he right to free expression ceases at the point where it leads to harm to the Government",[28] and since the foreign danger to our government recited in the statute, includes "espionage, sabotage, terrorism * * * terms of action * * *, it can be met with action by the Government."[29]

Most significantly, Judge Prettyman concludes his discussion of the First Amendment problem with a reference to *American Communications Association* v. *Douds,* 339

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point is foreign domination * * * *." Id.* at 561. "Surely a government owes no duty of protection to those who, dominated by a foreign organization, seek its overthrow." *Id.* at 555.

[26] *Id.* at 543.

[27] *Id.* at 544.

[28] *Ibid.*

[29] *Id.* at 546.

U. S. 382, and the restrictions on Communist trade union officers which the Supreme Court there held to be constitutionally permissible. His precis of the *Douds* holding concludes:

> "• • • the answer to the implication that if the statute were upheld the power of government over belief would be as unlimited as its power over conduct, is that the result does not follow 'while this Court sits'."[30]

Perfectly consistent with the Court of Appeals' opinion is its logical extension: inasmuch as no such direct involvement with a foreign power bent upon forcible overthrow exists with respect to an alleged Communist-front organization, we deal here entirely with beliefs rather than action.[31]

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[30] *Id.* at 546. Judge Prettyman then makes the observation that "The concurring opinion throws much light upon this problem." It would seem that the reference is to the Concurring Opinion of Mr. Justice Jackson in *Douds*, 339 U. S. 382, 422. This concurrence flatly states that just about anything is permissible so long as only Communists were affected; but the statute there under review would be unconstitutional against Socialists, and against any other non-Communists. *Douds, supra* at 422. Furthermore Mr. Justice Jackson dissented from so much of the opinion of the court as affected persons with Communist beliefs, as distinguished from those who committed the overt act of Party membership. *Id.* at 435-445. Is not Judge Prettyman's interest in this concurrence bottomed on its sharp and deliberate limitation of the restriction exclusively to Communist Party members?

[31] *Douds, supra,* upheld Congressional power to effectively bar Communists from labor union office. It was based on Congressional findings concerning the fomenting of political strikes. Nothing in the *Douds* case would seem to sanction the constitutionality of any attempt to restrict the rights of speech or association of any variety of political or economic non-conformity—members of alleged Communist-front organization's included—absent a specific showing of Communist Party membership or affiliation. Mr. Chief Justice Vinson, speaking for the *Douds* majority, pointed out that although the statute in question was upheld, a broader statute compelling political disclosure would be a violation of the First Amendment: "A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature." *Id.* at 402. The registration and labelling provisions of the Act prescribe exactly that.

Yet in the front organization cases, the Court of Appeals seems to have overlooked or discarded its own prior careful reasoning. Notwithstanding all of the specifications pointing to the extraordinary nature of foreign domination, and its constitutional significance, the Court of Appeals in the instant cases, and in the companion cases, summarily upheld constitutionality without discussion.

Amicus urges this Court to retrieve the principles originally enunciated by the Court of Appeals, and since abandoned by it. Although the Court of Appeals was loath to do so when faced with the inescapable consequences of its own reasoning, this Court should validate the forsaken pledge that while it sits the government's power over beliefs will not be as unlimited as its power over conduct.[32] Otherwise, the "latitude of expression" [33] that should flourish throughout the Nation will be fatally constricted.

2. *The Supreme Court in the* Communist Party *case.*

The frequently implied and often articulated minor premise in the first Court of Appeals case runs through Mr. Justice Frankfurter's majority opinion in this Court.[34] The special nature of foreign control is underscored throughout.

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[32] The conduct-belief comparison seems to have its origin in Mr. Chief Justice Vinson's warning in *Douds, supra* at 399, that "we must recognize, moreover, that regulation of 'conduct' has all too frequently been employed by public authority as a cloak to hide censorship of unpopular ideas."

[33] See text at note 27, *supra*. The distinction between a foreign dominated organization such as the Communist Party, has been held to be, and a hypothetical "domestic organization" which has "a partial non-deviation" from the policies of the foreign organization, was most provocatively noted by Judge Prettyman. 223 F. 2d at 561. This intimates precisely what *Amicus* is arguing: that inasmuch as the essential prerequisite of foreign domination is not present, the statute as applied to Communist-front organizations is invalid.

[34] 367 U. S. 1-115.

At the outset of the discussion of law, Mr. Justice Frankfurter observes:

> "A foreign government 'dominates' or 'controls' the 'direction' of the world Communist movement through very different means and in very different ways than one organization 'dominates' or 'controls' another. * * *"[35]

The discussion then proceeds with an analysis of the nature of control and domination of a Communist-action organization by a Communist foreign government. Of course no case involving a Communist-front organization or the Communist-front criteria was before the Court, and Mr. Justice Frankfurter was probably the Supreme Court Justice least likely to comment on an "unripe" or unpresented question.[36] But the implication is nonetheless clear. The presence of a Communist foreign government as one of the parties to a relationship effectively introduces an ingredient which makes such relationship different than any other relationship, including the relationship between a Communist-action organization and a Communist-front organization which it is alleged to dominate or control.

Following the pattern set by the Court of Appeals, this Court deemed it wise to set forth *in haec verba* a considerable amount of the Board's findings with respect to Soviet domination and control of the American Communist Party.[37] In twelve pages of verbatim quotations, Mr. Justice Frankfurter outlined the principal findings of the Board: the history of the Communist International (Com-

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[35] *Id.* at 38.

[36] "No rule of practice of this Court is better settled than 'never to anticipate a question of constitutional law in advance of the necessity of deciding it.' *Liverpool, New York & Philadelphia S. S. Co.* v. *Commissioners*, 113 U. S. 33, 39." *Id.* at 71-72.

[37] *Id.* at 42-54.

intern) beginning with its organization in Moscow, in March, 1919, through its various Congresses; the activities of the Political Bureau of the Communist International and its supervision of Communist Parties in the various nations of North America; the membership of the American Communist Party in the Comintern; the so-called "Conditions of Admission" to the Communist International"; the significance of the claimed dissolution of the Comintern; the attendance of leaders of the American Communist Party at Moscow for schooling and instructions; actions taken by the Comintern to cause organizational changes in the American Communist Party; the unquestioned control by Stalin of the Comintern; the circumstances of the change to "Communist Political Association," and its reorganization as the Communist Party after the Duclos letter; the presence of Comintern representatives in the United States to supervise Party activities.[38]

These findings are replete with what the Board was satisfied to regard as documentation of the American Communist Party's foreign control and its direct action relationship to the program of a foreign power dedicated to forcible overthrow of our government.[39] And this Court held that these findings of the threat "not only to existing government in the United States but to the United States as a sovereign, independent nation", could not be dismissed "as unfounded or irrational imaginings."[40]

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[38] *Ibid.* See text at note 3, *supra.*

[39] *Id.* at 55-56. Of particular significance—and considerable attention is devoted to these items in the majority opinion—are the affairs of the "Starobin letter," and the Childs-Weiner conversations. These related directly to fiscal subsidization from the Soviet Union for American Communist Party activities, and to directions allegedly transmitted to the American Communist Party by D. Z. Manuilsky, a Ukrainian S. S. R. United Nations delegate. *Id.* at 22-29.

[40] *Id.* at 95. Congress' power here is explained in terms of its inherent power to provide "resistance against foreign incursion." *Ibid.*

On the other hand, the Board's findings with respect to the Veterans, for example, are of an entirely different quality. There is some attention devoted to showing "rapport" [41] between it and the Communist Party, and certain evidence is set forth concerning Party members' activity in the Veterans, and vice versa.[42] But the thrust of the Board Report is not with action of this or any sort. It is rather with expressions of opinions and attitudes on various contemporary issues: World War II, release of certain political prisoners, the Government of Finland, Hemingway's *For Whom the Bell Tolls,* Spain and Latin America, China, Greece, the Truman Policy and the Marshall Plan, Korea, Congressional Committees, and internal security legislation.[43] This is so clearly in the category of speech and association that further argument seems superfluous.[44]

Likewise of considerable significance in this Court's decision upholding the registration requirement as applied to the Communist Party, is Mr. Justice Frankfurter's concern with the Act's severability clause.[45] He wrote:

> "The authoritative legislative history clearly demonstrates that a major purpose of the enactment was to regulate Communist-action organizations by means of the public disclosure effected by registration, apart from the other regulatory provisions of the Act. Such

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[41] R. 109.

[42] R. 105, 113.

[43] R. 131-147.

[44] Petitioners have claimed throughout these proceedings that the positions which they have taken on many public policy questions were shared by many highly-respected and unmistakably non-Communist Americans.

[45] 367 U. S. at 77.

> is, of course, the very purpose of the severability clause. This being so, our consideration of any other provisions than those of Sec. 7, requiring Communist-action organizations to register and file a registration statement, could in no way affect our decision in the present case. Were every portion of the Act purporting to regulate or prohibit the conduct of registered organizations (or organizations ordered to register) and of their members, as such, unconstitutional, we would still have to affirm the judgment below."

This concern with the severability of strictures reflects the concern for the constitutional distinctions between Communist-action organizations and all other organizations. The inference is clear that the majority intended this language as a caveat to those who might too easily apply the Act to other than Communist-action organizations.[46]

But the essence of the majority opinion is the application of the balancing test. That the registration provision of the Act will inevitably have a restrictive effect on freedom of speech, freedom of assembly, and freedom of association, is conceded at the outset.[47] Mr. Justice Frank-

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[46] It is of special significance that Mr. Justice Frankfurter, who is known to have chosen every word with deliberateness, wrote in the first sentence of the excerpt quoted above that the major purpose of the Act was regulation, via registration and disclosure, of "Communist-action organizations". He could just as easily, and perhaps even more accurately, have written that the major purpose of the Act was to regulate "Communist organizations", or "Communist action and Communist front organizations." In the context of the discussion of the severability clause, the limitation to "Communist action" and the consequent and perhaps deliberate omission of "Communist front," demonstrates a critical approach to the constitutionality of the provisions for registration of Communist-front organizations.

[47] Freedom of speech and assembly, 367 U. S. at 89, citing *Thomas* v. *Collins*, 323 U. S. 516; freedom of association, *id.* at 90-93, citing

furter stated, however, that these freedoms are not absolute, and that the First Amendment does not bar limitations or restrictions if there is a sufficiently weighty public interest to be served by the speech-limiting governmental regulation. On one side of the balance is the interest in maintaining freedom of expression and association; on the other is the public interest, as declared by Congress, in the requirement that Communist-action organizations make public disclosure via registration.[48] Mr. Justice Frankfurter states quite specifically that the non-free speech side of the scales varies with 1) "the magnitude of the public interests which the registration and disclosure provisions are designed to protect", and 2) "the pertinence which registration and disclosure bear to the protection of those interests."[49] And the conclusion is then reached that in this instance the balance is in favor of the regulation.[50]

This section of the opinion contains repeated references and reminders that the foreign-controlled Communist Party pursues forcible overthrow of our government and its replacement by a totalitarian dictatorship subservient to the Soviet Union; that such methods have succeeded in other countries; that sabotage and espionage have been successfully perpetrated. It is these considerations, the opinion held, which justify the repression of First Amendment freedoms.[51]

NAACP v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 576; *Shelton* v. *Tucker*, 364 U. S. 479.

[48] 367 U. S. at 96-97.

[49] *Id.* at 93.

[50] *Id.* at 102-105.

[51] *Ibid.* Mr. Justice Frankfurter takes pains to distinguish the "freedom of association" cases arising from struggles of the National Association for the Advancement of Colored People to carry on its lawful activities in the South.

Following this reasoning and applying the balancing test, it follows that with anything other than a Communist-action organization involved, the scales do not tip in favor of regulation. And, not surprisingly in the light of the various intonations in the opinion to which we have referred previously, Mr. Justice Frankfurter concludes his discussion on the First Amendment with an express disclaimer:

> "It is argued that if Congress may constitutionally enact legislation requiring the Communist Party to register, to list its members, to file financial statements, and to identify its printing presses, Congress may impose similar requirements upon any group which pursues unpopular political objectives or which expresses an unpopular political ideology. Nothing which we decide here remotely carries such an implication. The Subversive Activities Control Act applies only to *foreign-dominated* organizations which work primarily to advance the objectives of a world movement controlled by the government of a *foreign* country. See 3(3), 2(4). It applies only to organizations directed, dominated, or controlled by a *particular* foreign country, the leader of a movement which, Congress has found, is 'in its origins, its development, and its present practice, * * * a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups * * *, espionage, sabotage, terrorism, and any other means deemed necessary to

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See note 47, *supra*. The distinction is essentially that while there was insufficient "magnitude of * * * public interests" to justify compulsory registration of the NAACP, the "magnitude" is sufficient with respect to the foreign-dominated Communist Party. *Amicus*, however, does not agree that any balancing test may be constitutionally used when First Amendment freedoms are at stake. See discussion, *infra*, pp. 37 et seq.

> establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.' 2(1). This is the full purported reach of the statute, and its fullest effect. There is no * * * attempt here to impose stifling obligations upon the proponents of a particular political creed as such, or even to check the importation of particular political ideas from abroad for propagation here. The Act compels the registration of organized groups which have been made the instruments of a long-continued, systematic, disciplined activity directed by a foreign power and purposing to overthrow existing government in this country." [52]

C. The Court of Appeals in the "Front" cases.

The Court of Appeals' affirmances below failed to recognize the constitutional significance of the distinctions we have pointed out. This oversight is not only inconsistent with the many indications given by this Court in the *Communist Party* case that the distinctions must be recognized; it is equally inconsistent with the Court of Appeals' own opinion in the *Communist Party* case. Furthermore, the implication by the Court of Appeals that this Court, in the *Communist Party* case, upheld the constitutionality of registration orders applied to Communist-front organizations, is entirely without substance.

Six decisions by the Court of Appeals, on petitions to review Communist-front registration orders, contained at least passing references to the question of constitutionality of the registration requirements as applied to Communist-front organizations. In four of these, registration orders were upheld. In one, the registration order was reversed.

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[52] 367 U. S. at 104-105.

In another, because of the apparent dissolution of the organization, the proceeding was "remanded to the Board with instructions to place it in an indefinitely inactive status."

Labor Youth League v. *Subversive Activities Control Board*, 322 F. 2d 364, the dissolution case, was the first Communist-front case decided by the Court of Appeals. Because of its view as to the disposition of this case, the Court expressly held it unnecessary to consider whether the statute would be constitutional if applied to the organization and its members.

The second Communist-front organization decision by the Court of Appeals, *National Council of American-Soviet Friendship* v. *Subversive Activities Control Board*, 322 F. 2d 375, set aside the Board order on the ground that the government failed to sustain its burden of proof that the organization was directed, dominated or controlled by the Communist Party. Part XIII of the opinion, referring to the constitutional arguments that the registration provisions infringe on First Amendment rights, quotes a portion of Mr. Justice Frankfurter's disclaimer[52a] from the *Communist Party* case, and concludes:

> "Since in our view of the case it can be decided on non-constitutional grounds, we do not pass upon the foregoing and other constitutional points pressed upon us. . . ." 322 F. 2d at 392.

On December 17, 1963, the Court of Appeals affirmed four Communist-front registration orders, *Louis Weinstock (United May Day Committee)* v. *Subversive Activities Control Board*, 331 F. 2d 75; *Jefferson School of Social Science* v. *Subversive Activities Control Board*, 331 F. 2d 76; *American Committee for the Protection of the For-*

[52a] *Ibid.*

eign Born v. *Subversive Activities Control Board*, 331 F. 2d 53, and *Veterans of the Abraham Lincoln Brigade* v. *Subversive Activities Control Board*, 331 F. 2d 64.

In *Jefferson School*, the entire discussion of constitutionality consists of an abbreviated observation that since the Supreme Court sustained the constitutionality of the registration provisions in the *Communist Party* case, there was simply nothing more to be said. "Relying upon that authority," the Court said, "we now reject the contentions of the petitioner in that regard." 331 U. S. at 82.

The language is obviously ambiguous, since the "registration provisions" could apply to (1) Communist-action organizations; (2) Communist-front organizations; or (3) Communist organizations as a whole.

The Court of Appeals hints at an answer to this question in its decisions in the *Weinstock* and *American Committee* cases. *Weinstock's* concluding paragraph notes that the Supreme Court held in the *Communist Party* case that the Act was constitutional "when applied to a Communist-action organization". And then:

> "This court held in Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board, decided today, that the opinion in the *Communist Party* case encompasses the statute when applied to Communist-front organizations." 331 F. 2d at 76.

American Committee is to the same effect. It concludes that the question whether "the registration provisions of the Internal Security Act are unconstitutional" need not be considered because

> "We have ruled upon these points in other cases, to which we have referred, *supra*." 331 F. 2d at 61.

The reference is apparently to footnote 8 of the opinion which merely cites *Labor Youth League, National Council* and *Veterans of the Abraham Lincoln Brigade.*

Since neither the *Labor Youth League* nor the *National Council* cases shed any constitutional light, and since all of the December 17th decisions apparently point to the *Veterans* case exclusively as containing the authoritative constitutional exposition, one turns eagerly to that decision.

Here again, the Court of Appeals devoted the concluding section of its opinion to the constitutional questions. We set forth that section of the opinion in its entirety:

> "The Brigade argues that, although the Supreme Court held Section 7 of the Act (the registration requirement) to be constitutional when applied to a Communist-action organization, the reasons given are not applicable to a Communist-front organization; and that as to the latter Section 7 is invalid. The argument is that the conclusion of the Court was premised upon the congressional findings concerning the world Communist movement, its purposes, and its methods of operation (Secs. 3(3) and 2(4)); and that there is nothing in this record to support a finding that the Brigade was foreign-controlled and operated or was utilized to bring about the overthrow of the government or the establishment here of a totalitarian dictatorship. But we think the Supreme Court's opinion is not so narrowly based. The purposes of the Act, said the Court, are expressed in Section 2 and the registration section is not 'lacking in consonance' with those provisions. Section 2 of the Act, in subparagraph (7), recites that Communist organizations 'operate to a substantial extent through organizations commonly known as "Com-

> munist fronts".' So, as a matter of statutory constitutionality, we are of opinion that the conclusions reached by the Court in the cited case apply here. The discussion of the subject by the Court is too long to repeat. A reading of the whole of it will demonstrate its applicability to Communist fronts." 331 F. 2d at 73.

The Court of Appeals thus apparently held that this Court, in affirming the constitutionality of the registration provisions for Communist-action organizations, simultaneously—either expressly or by unmistakable implication—upheld the constitutionality of the registration of Communist-front organizations. Two points are made in support of this construction: (1) that the Supreme Court held, or implied, or concluded, that the Communist-front registration provisions are not "lacking in consonance" with the purposes of the Act as set forth in Sec. 2, and particularly paragraph seven thereof, the only portion of Sec. 2 which deals with Communist fronts; and (2) the unspecified, unidentified, and uncited "discussion of the subject by the Court", "the whole of it" which is "too long to repeat."

Since the entire Court of Appeals' holding of constitutionality of registration of Communist fronts in these four cases rests on these two foundations, an analysis of each of them is appropriate.

a) *"The whole of it."* As we have shown, a reading of "the whole" of this Court's decision does not "demonstrate its applicability to Communist fronts." Quite the contrary, it demonstrates a scrupulous avoidance of even the merest suggestion of applicability to Communist fronts. And it contains numerous implications that the constitutional standard may not be met for Communist fronts. The "discussion of the subject" of Communist-fronts by the Supreme Court can hardly be "too long to repeat", since there

is no such discussion anywhere in the opinion. Though the majority opinion contains innumerable references to Communist-action organizations, there are no more than peripheral references to Communist-front organizations, and the court below fails to provide any citation to support its conclusion. Perhaps the two Judges in the majority of the Court of Appeals hold the view that Communist-fronts present no constitutional questions other than those presented by Communist-action organizations. If so, they neglected to say so, but they are plainly in error in attributing their view to this Court.

b) *"Lacking in consonance"*. As one reads the sentences of the Court of Appeals' opinion which rest upon this phrase, one can easily get a mistaken impression. The passage implies that the Supreme Court expressly held that the Communist-front registration provisions are not "lacking in consonance" with the constitutionally permissible purposes of the Act to guard the Republic against forcible overthrow by a Soviet-dominated Communist totalitarian dictatorship. The Court of Appeals' choice of language is unfortunate, since this Court said nothing of the kind.

The "lacking in consonance" language comes from subdivision A of Part V of Mr. Justice Frankfurter's majority opinion, entitled "Outlawry and Attainder". The Party argued that the Act was a bill of attainder which sought to outlaw the Communist Party. Justice Frankfurter reasoned, however, that the consequences of registration were not simply outlawry but had "a rational relation to the purposes of the Act" as expressed in Sec. 2. In support, he recited some of the findings of Sec. 2 and in each case the related consequences of registration. Then he said:

> "None of this is so lacking in consonance as to suggest a clandestine purpose behind the registration provisions." 367 U. S. at 83.

This is the origin of "lacking in consonance." There is nothing in this passage about Communist-front organizations. All of the references to Sec. 2 purposes are expressly related to Communist-action organizations. All of the corresponding references to consequences are to consequences on "such" Communist-action organizations. The Court of Appeals' inclusion of paragraph seven of Sec. 2, the single Communist-front purpose, within this exclusively Communist-action rubric, is purely gratuitous.

D. Recognition of the distinction by this Court in other cases.

Decisions of this Court other than *Communist Party* v. *Subversive Activities Control Board,* support the view that the Communist Party, and only the Communist Party, may be subjected to exceptional constitutional treatment. Particularly relevant are *Sweezy* v. *New Hampshire,* 354 U. S. 234 (1957), *Barenblatt* v. *United States,* 360 U. S. 109 (1959), and *Gibson* v. *Florida Legislative Committee,* 372 U. S. 539 (1963).[53]

Sweezy held that the Attorney General of New Hampshire could not compel disclosure of information concerning the Progressive Party. Such disclosure, this Court held, was forbidden by the First Amendment. The crux of this holding is articulated most clearly in a passage from Mr. Justice Frankfurter's concurring opinion:

> "Whatever, on the basis of massive proof and in the light of history, of which this Court may well take judicial notice, be the justification for not regarding the Communist Party as a conventional political party, no such justification has been afforded in regard to the Progressive Party." 354 U. S. at 266.

[53] The following argument is enhanced by the fact that in *Sweezy* and *Gibson* the decisions were in favor of the individual's claimed right under the First Amendment, while in *Barenblatt* the decision was against the constitutional claim.

Barenblatt upheld the power of the House Un-American Activities Committee to inquire about alleged Communist activities. Mr. Justice Harlan, writing for the majority, states quite specifically, in support of the Committee's right to compel disclosure of the information sought, that this Court has deliberately refused to view the Communist Party as an "ordinary political party." Consequently, and only because the Communist Party is so regarded, Mr. Justice Harlan continued, the Supreme Court has upheld federal legislation which "in a different context, would certainly have raised constitutional issues of the gravest character."[34] Mr. Justice Harlan found it helpful to his analysis to cite and distinguish *Sweezy*. He said quite plainly that the Progressive Party "was too far removed from the premises on which the constitutionality of the State's investigation had to depend to withstand attack . . . ."[35]

In *Gibson*, this Court held that the Miami Chapter of the National Association for the Advancement of Colored People was protected by the First Amendment's guarantee of freedom of association from compulsory disclosure of all or any part of its membership lists. A Committee of the Florida State Legislature was seeking this information for the stated purpose of investigating Communist infiltration into the NAACP. The investigating Committee and the Florida courts which upheld the contempt conviction of Reverend Gibson, the NAACP Chapter President who refused to comply with the Committee's subpoena *duces tecum*, expressly denied any interest in investigating the NAACP. According to the State of Florida the object of the investigation was communism, not race relations. Thus this case was substantially different from such cases as

[34] 360 U. S. at 128.

[35] *Id.* at 127.

NAACP v. *Alabama, supra,* where it was clear that the State's concern was race relations, not communism.

Yet *Gibson* held that there were definite First Amendment limits on the extent to which any organization's freedom of association could be infringed upon, regardless of the stated purpose of the investigation, with but one exception—the Communist Party itself. Mr. Justice Goldberg wrote for the Court, at p. 549:

> "Compelling such an organization, engaged in the exercise of First and Fourteenth Amendment rights, to disclose its membership presents, under our cases, a question wholly different from compelling the Communist Party to disclose its own membership."

In the Board's reply to *Amicus'* brief in the court below, three decisions of this Court are cited for the purpose of showing the existence of constitutional power to investigate communist "infiltration into other groups or organizations" (p. 4): *McPhaul* v. *United States,* 364 U. S. 372 (1960) (Civil Rights Congress); *Wilkinson* v. *United States,* 365 U. S. 399 (1961) (Emergency Civil Liberties Committee); and *Braden* v. *United States,* 365 U. S. 43 (1961) (Southern Conference Educational Fund).

None of these decisions support the Board's contention. In *McPhaul,* no question involving the First Amendment was either argued or decided. And *Wilkinson* and *Braden* both expressly relied upon the distinction between membership in the Communist Party and anything other than membership in the Communist Party which was recognized in *Barenblatt.* As Mr. Justice Stewart pointed out in *Wilkinson,* the investigation into Communist Party membership is permissible because it is in effect an investigation of "persons advocating overthrow of the Government." 365 U. S. at 474.

Thus *Barenblatt, Wilkinson* and *Braden* all upheld the right to investigate the Communist Party because of its special foreign-dominated character. That this is exactly what the three cases held is made clear by the opinion in *Gibson*:

> "In Barenblatt, Wilkinson, and Braden, however, it was a refusal to answer a question or questions concerning the witness' *own* past or present membership *in the Communist Party* which supported his conviction. It is apparent that the necessary preponderating governmental interest and, in fact, the very result in those cases were founded on the holding that the Communist Party is not an ordinary or legitimate political party, as known in this country, and that, because of its particular nature, membership therein is *itself* a permissible subject of regulation and legislative scrutiny." 372 U. S. at 547.

The cases at bar present the same "different context" as that carefully allowed for by this Court in *Sweezy, Barenblatt* and *Gibson*. Like the Progressive Party, petitioners are "too far removed from the premises on which * * * constitutionality * * * [has] to depend * * *."[56]

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[56] *Ibid.* See concurring opinion of Mr. Justice Jackson in *American Communications Association* v. *Douds*, 339 U. S. 382, 422-33:

> "If the statute before us required labor union officials to forswear membership in the Republican Party, the Democratic Party, or the Socialist Party, I suppose all agree that it would be unconstitutional. But why, if it is valid as to the Communist Party?
>
> The answer, for me, is in the decisive differences between the Communist Party and any other Party of any importance in the long experience of the United States with party government. . . . The Communist Party, at least outwardly, only exaggerates these well-worn political techniques and many persons are thus led to think of it as just another more radical political party. If it were nothing but that, I think this leg-

POINT II

The Subversive Activities Control Act violates the First Amendment because it is not narrowly drawn to meet the alleged danger, offends the clear and present danger test, and runs afoul of *DeJonge* v. *Oregon*.

The preceding section of this brief was devoted exclusively to the development and presentation of *Amicus'* thesis that there is a vital and substantial distinction—a distinction with constitutional consequences—between the power of government to abridge the First Amendment freedoms of the Communist Party, and its power to regulate the same freedoms of any other type of political or ideological association. For the purposes of argument, we admitted the premises of the balancing test as articulated by Mr. Justice Frankfurter in *Communist Party* v. *Subversive Activities Control Board*. We argued that whatever conclusion the Court came to in balancing the First Amendment against the danger of forcible overthrow by a foreign totalitarian power, the First Amendment must prevail where the abridgment side of the scale carried any less weight.

Amicus does not agree, however, that the balancing test is defensible as a judicial means of determining whether speech or association may be suppressed. Our briefs *amicus curiae* in both *Communist Party* cases (351 U. S. 115 and 367 U. S. 1) argued the unconstitutionality of the Act as applied to the Communist Party. We reiterate the views expressed there and respectfully suggest that it is

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islation would be constitutional. . . . [T]he Communist Party is something different in fact from any other substantial party we have known, and hence may constitutionally be treated as something different in law."

never inappropriate for this Court to reconsider any of its decisions which abridge First Amendment freedoms.

It is our view that the Subversive Activities Control Act is incompatible with at least three constitutional principles which have been established by this Court in cases involving the First Amendment.

1. ***The statute is not narrowly drawn.***

The statute is not carefully and "narrowly drawn to prevent the supposed evil . . . "[57] In the context of sedition, a statutory restriction on freedom of expression cannot be upheld "if it does not deal with a willful attempt to obstruct a described and defined activity of the government."[58] And in any First Amendment case, it is only a "narrow exception to freedom of expression which a state may carve out to satisfy the adverse demands of other interests of society."[59]

There has been no showing that narrower and more direct means, whose effects will be felt closer to the claimed point of danger, are inadequate to cope with any actual threat of forcible overthrow. There is an arsenal of statutes available to cope with such overt acts as insurrection, sabotage and espionage, as well as conspiracies and attempts to commit those substantive crimes. Even the Smith Act (18 U. S. C. Sec. 2385)—to adopt for the moment the vocabulary of sedition and seditious conspiracy—is a more direct and narrowly drawn means for dealing with the alleged substantive evil.

Assuming Congress has constitutional authority to legislate in the area of Communist beliefs and associations,

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[57] *Cantwell* v. *Connecticut*, 310 U. S. 296, 308 (1940).

[58] *Herndon* v. *Lowry*, 301 U. S. 242, 255-56 (1937).

[59] *Burstyn* v. *Wilson*, 343 U. S. 495, 505 (1952).

surely a statute might have been drawn which would have isolated and defined the locus of proscribed activity with some greater precision. See *Lovell* v. *Griffin*, 303 U. S. 404 (1938); *Schneider* v. *State*, 308 U. S. 147 (1939); *Carlson* v. *California*, 310 U. S. 106 (1940). The rule that restrictions on expression and association must be narrowly drawn, calls for a scalpel not a broadsword.

2. *The statute offends the clear and present danger test.*

It should not be forgotten that the clear and present danger test was first articulated by Mr. Justice Holmes, not in dissent, but speaking for the Court in *Schenck* v. *United States*, 249 U. S. 47 (1919). *Schenck* affirmed a conviction under the Espionage Act of 1917 for publishing and circulating to men called for military service, leaflets which called for insubordination and obstruction of recruitment and enlistment during World War I. The Court held that the statute and conviction were constitutionally justified only because of war conditions. Mr. Justice Holmes then wrote:

> "The question in every case is whether the words used are used in such circumstances and are of such a nature to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right." 249 U. S. at 52.

The same kind of activity held criminal in *Schenck*, but under less bellicose conditions, was held protected against abridgment under the clear and present danger test in

Taylor v. *Mississippi*, 319 U. S. 583 (1943). Reversing a conviction of a religious opponent to World War II, Mr. Justice Roberts wrote for a unanimous court:

> "As applied to the appellants [the statute] punishes them although what they communicated is not claimed or shown to have been done with an evil or sinister purpose, to have advocated or incited subversive action against the nation or state, or have threatened any clear or present danger to our institutions or our government. What these appellants communicated were their beliefs and opinions concerning domestic measures and trends in national and world affairs." 319 U. S. at 589, 590.

And in *Herndon* v. *Lowry*, 301 U. S. 242 (1937), the Court expressly applied the clear and present danger test to reverse the conviction, under a Georgia incitement to insurrection statute, of an organizer for the Communist Party who was admittedly advocating among Negroes the then program of the Party for the establishment of a Black Belt Republic. Mr. Justice Roberts wrote for the Court:

> "The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterance of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered." 301 U. S. at 528.[60]

Amicus contends that under the clear and present danger test not even the Communist-action organization registra-

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[60] More recently, the Court has applied the clear and present danger test to reverse a contempt conviction founded upon criticism of judicial conduct. *Wood* v. *Georgia*, 370 U. S. 375 (1962).

tion provisions of the Control Act can survive; *a fortiori*, the Communist-front registration provisions must be declared unconstitutional.

3. *The statute runs afoul of* DeJonge v. Oregon.

More than that, it is our contention that some statutory abridgements of the First Amendment are so exceptional that neither the balancing test nor the clear and present danger test need be invoked to strike them down. *DeJonge* v. *Oregon*, 299 U. S. 353 (1937), which held the Oregon criminal syndicalism statute unconstitutional on its face, was such a case. Speaking for a unanimous Court, Mr. Chief Justice Hughes said:

> "The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects." 299 U. S. at 362.

The registration requirements of the Act stand in direct opposition to the First Amendment as declared in *DeJonge*. The necessity for the expression of ideas, the fact that their reasonableness, their logic, their consistency, their capacity to persuade others, their ability to respond to public problems; the awareness that the impact upon these ideas of other ideas will determine their fate, the confidence that truth and reason will ultimately prevail in the marketplace, are contemptuously disregarded by the rationale of the Act. All that the Act is concerned with is whether the speaker can be branded a Communist. The result is a stifling of communication and the suffocation of the free flow of ideas which are vital to the functioning of democratic government.

In the quarter century since *DeJonge*, there have been considerable changes in all aspects of American life. The world has contracted; many new problems, both foreign and domestic, confront our nation; many old problems remain with us. The value of and the necessity for maximizing freedom of speech, association and assembly, is even greater today than it was twenty-five years ago.

This Court has never repudiated either the philosophy or the decision of *DeJonge*. Although in recent years it has been cited more frequently in dissents than in majority opinions, it still authoritatively states what the First Amendment means. The essence of *DeJonge* is that while there may be some circumstances in which the government may have a legitimate concern over *what* is said, it is commanded by the First Amendment to be wholly disinterested in who says it.

There is no occasion more appropriate than is presented by this case for a reaffirmation of the doctrine of *DeJonge*. With the proscription of Communist-action organizations, the constitutionally dubious abridgement of speech has gone far enough—in *Amicus'* view, it has gone much too far. A decision which upholds the constitutionality of branding organizations as Communist-fronts will damage our free institutions so severely, it will take decades to recover from the blow. On the other hand, a decision which announces to Congress, to the Executive Branch of government, and to the public opinion of the country and the world, that the erosion has ended, will recapture the first principles of our democratic institutions.

POINT III

Sections 3(4) and 13(f) of the Subversive Activities Control Act, are so vague and uncertain, that they violate the due process clause of the Fifth Amendment to the Constitution.

Section 3(4) of the Act provides:

> The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

Section 13(f) of the Act provides:

> "In determining whether any organization is a 'Communist-front organization', the Board shall take into consideration—
>
> (1) the extent to which persons who are active in its management, direction or supervision whether or not holding office therein, are active in the management, direction or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of this title; and
>
> (2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the

world Communist movement referred to in section 2 of this title; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of this title; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 of this title.

The terms included in these sections are nowhere defined in the Act. Standing alone, they encompass such a limitless range of acts and omissions, that they provide no clearly ascertainable standard. They must therefore fall for violating the due process clause of the fifth amendment. *Baggett* v. *Bullitt*, 377 U. S. 360 (1964); *Bouie* v. *City of Columbia*, 378 U. S. 347 (1964); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278 (1961); *United States* v. *Cardiff*, 344 U. S. 174 (1952); *Musser* v. *Utah*, 333 U. S. 45 (1948); *Winters* v. *New York*, 333 U. S. 507 (1948); *Kraus & Bros.* v. *United States*, 327 U. S. 614 (1946); *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939); *United States* v. *L. Cohen Grocery Co.*, 255 U. S. 81 (1921); *International Harvester Co.* v. *Kentucky*, 234 U. S. 216 (1914).[61]

[61] The argument that the provisions of the Act dealing with Communist-action organizations were unconstitutionally vague received only passing treatment when the statute was considered by the Court of Appeals. *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531, 559. When the *Communist Party* case was before the Supreme Court, 367 U. S. 1, although Mr. Justice Frankfurter referred to this argument at pages 71 and 82,

With characteristic succinctness, Mr. Justice Holmes described the essential vice of a vague statute. It requires one "to divine prophetically what the reaction of only partially determinate facts would be * * *," thereby seeking "to exact gifts that mankind does not possess." *International Harvester Co.* v. *Kentucky, supra* at 223-224. In other words, due process requires "fair warning". *Bouie* v. *City of Columbia, supra,* at 351.

Most directly in point here are *Cramp* v. *Board of Public Instruction, supra,* and *Baggett* v. *Bullitt, supra. Cramp* struck down as unconstitutionally vague a Florida loyalty-oath statute whose provisions were remarkably similar to those in the Act now before this court. The Florida statute required state employees to acknowledge under oath that they had not and would not lend "aid, support, advice, counsel or influence to the Communist Party."

Writing for a unanimous Court, Mr. Justice Stewart said:

> "The provision of the oath here in question, it is to be noted, says nothing of advocacy of violent overthrow of state or federal government. It says nothing of membership or affiliation with the Communist Party, past or present. The provision is completely lacking in these or any other terms susceptible of objective measurement. Those who take this oath must swear rather that they have not in the unending past ever knowingly lent their 'aid', or 'support', or 'advice', or 'counsel', or 'influence' to the Communist Party.

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the opinion of the Court concludes at page 115 without any discussion of it.

The only mention of vagueness by the Court of Appeals in the "Front" cases was the observation in *National Council,* that "... we do not pass upon ... other constitutional points pressed upon us ... such as questions of vagueness of the statute. ..." 322 F. 2d at 392.

> What do these phrases mean? In the not too distant past Communist Party candidates appeared regularly and legally on the ballot in many state and local elections. Elsewhere the Communist Party has on occasion endorsed or supported candidates nominated by others. Could one who had ever cast his vote for such a candidate safely subscribe to this legislative oath? Could a lawyer who had ever represented the Communist Party or its members swear with either confidence or honesty that he had never knowingly lent his 'counsel' to the Party? Could a journalist who had ever defended the constitutional rights of the Communist Party conscientiously take an oath that he had never lent the Party his 'support?' Indeed could anyone honestly subscribe to this oath who had ever supported any cause with contemporaneous knowledge that the Communist Party also supported it?" 368 U. S. at 286.

Mr. Justice Stewart's analysis is wholly applicable to the language of Sections 3(4) and 13(f) of the Act. The language contained in those sections, to establish whether an organization is a Communist-front, includes "giving aid and support to", "the extent to which its support, financial or otherwise, is derived from", "the extent to which its funds, resources and personnel are used to further or promote the objectives of", and "the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of" any Communist-action organization, Communist foreign government, or the world Communist movement.

The words "aid" and "support," are no more "susceptible of objective measurement" when they appear in the Act than when they appeared in the Florida statute. The same hypothetical journalist pictured by Mr. Justice Stewart as a person who could not conscientiously take the Florida

oath that he had never lent the Party his "support" if he had so much as "ever defended the constitutional rights of the Communist Party" is subjected to a standard no less taxing if, when he writes an article defending the constitutional rights of Communists, his publication may be held to be lending its "support" to the Party.

Even more vague is the phrase "to further and promote the objectives of any Communist-action organization." If Mr. Justice Stewart's hypothetical lawyer might have some difficulty in deciding whether he ever gave "counsel" to the Communist Party, how much greater is the dilemma, for example, of a bar association, or a civil liberties organization, lest its "funds, resources or personnel" be found to have been "used to further or promote the objectives" of a Communist organization? Indeed, in writing, printing and filing a brief *amicus curiae* in *Communist Party* v. *Subversive Activities Control Board*,[62] did *Amicus* use its "funds, resources or personnel" to "further or promote the objectives of a Communist-action organization?"

In *Baggett* v. *Bullitt, supra,* this Court declared unconstitutionally vague a State of Washington loyalty oath which had many of the same obnoxious characteristics as that in *Cramp*.[63] It was of no consequence that the Washington statute had been construed to require *scienter*.

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[62] 367 U. S. 1.

[63] "The questions put by the Court in Cramp may with equal force be asked here. Does the statute reach endorsement or support for Communist candidates for office? Does it reach a lawyer who represents the Communist Party or its members or a journalist who defends constitutional rights of the Communist Party or its members or anyone who supports any cause which is likewise supported by Communists or the Communist Party? The susceptibility of the statutory language to require foreswearing of an undefined variety of "guiltless knowing behavior" is what the Court condemned in Cramp. This statute, like the one at issue in Cramp, is unconstitutionally vague." *Baggett* v. *Bullitt, supra.*

"But what is it that the Washington professor must 'know'? Must he know that his aid or teaching will be used by another and that the person aided has the requisite guilty intent or is it sufficient that he know that his aid or teaching would or may be useful to others in the commission of acts intended to overthrow the Government? Is it subversive activity, for example, to attend and participate in international conventions of mathematicians and exchange views with scholars from Communist countries? What about the editor of a scholarly journal who analyzes and criticizes the manuscripts of Communist scholars submitted for publication? Is selecting outstanding scholars from Communist countries as visiting professors and advising, teaching, or consulting with them at the University of Washington a subversive activity if such scholars are known to be Communists, or regardless of their affiliations, regularly teach students who are members of the Communist Party, which by statutory definition is subversive and dedicated to the overthrow of the Government?" [64]

This Court in *Cramp*, particularly emphasizing that definiteness and certainty are of special importance in statutes which have the effect of limiting freedom of expression, said that "The vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution." 368 U. S. at 287-288.[65]

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[64] *Id.* at ——.

[65] See *Herndon* v. *Lowry*, *supra*, at 263-264, where Mr. Justice Roberts wrote: "The statute, as construed and applied, amounts merely to a dragnet which may enmesh anyone who agitates for a change in government if a jury can be persuaded that he ought

The special concern in vagueness decisions with possible inhibitions of freedom of expression reflects the preferred position of constitutional liberties protected by the Bill of Rights.[66] The reason is wise and practical. If any vague statute, criminal or civil, is capable of producing great injustice because it fails "to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused",[67] how much more dangerous is a statute whose vagueness does all of this harm, and at the same time represses free speech?[68]

> "We are dealing with indefinite statutes whose terms, even narrowly construed, abut upon sensitive areas of basic First Amendment freedoms. . . . Free speech may not be so inhibited." *Baggett, supra.*

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to have foreseen his words would have some effect in the future conduct of others." In *Winters* v. *New York*, 333 U. S. 507, 517, the Supreme Court said "This Court goes far to uphold state statutes that deal with offenses, difficult to define when they are not entwined with limitations on full expression. We have the same attitude toward federal statutes."

[66] *United States* v. *Carolene Products*, 304 U. S. 144, 152 n. 4. See *Kovacs* v. *Cooper*, 336 U. S. 77; *Thomas* v. *Collins*, 323 U. S. 516; *Thornhill* v. *Alabama*, 310 U. S. 88.

[67] *Musser* v. *Utah*, 333 U. S. 95, 97.

[68] "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face . . . is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment." *Stromberg* v. *California*, 283 U. S. 359, 369.

"It would be blinking reality not to acknowledge that there are some among us always ready to affix a Communist label upon those whose ideas they violently oppose. And experience teaches that prosecutors too are human."[69] Precisely because of the vague criteria and definition, the label of Communist-front may be affixed all to readily. This case falls squarely within the compass of *Cramp* v. *Board of Public Instruction*, and *Baggett* v. *Bullitt*, and this court should so hold.

CONCLUSION

For the foregoing reasons, the registration provisions the Subversive Activities Control Act should be declared unconstitutional and the orders of the Board set aside.

Respectfully submitted,

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November, 1964

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[69] *Cramp*, supra at 286-287. Administrative officials, without the same due process restraints as are generally applicable to prosecutors, are probably even more subject to human frailties.

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 65

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,
PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the court of appeals (R. 215–232) is reported at 331 F. 2d 64.

JURISDICTION

The judgment of the court of appeals was entered on March 2, 1964 (R. 234), and the petition for a writ of certiorari was filed on May 5, 1964. The petition was granted on June 22, 1964 (377 U.S. 989; R. 235). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1) and Section 14(a) of the Subversive Activities Control Act of 1950, 50 U.S.C. 793.

QUESTIONS PRESENTED

The Subversive Activities Control Act of 1950 provides for the registration of any "Communist-front organization," which is defined (Section 3(4)) as an organization "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Petitioner was found by the Subversive Activities Control Board to be controlled by, and to be operated primarily to give aid and support to, the Communist Party, which the Board had previously found to be a Communist-action organization. The questions presented are:

1. Whether the Board or the court below erred in applying either the control or aid components of Section 3(4) or the evidentiary factors in Section 13(f) to the facts before them.

2. Whether the provisions of the Subversive Activities Control Act of 1950 providing for the registration of "Communist-front" organizations violate the First Amendment.

3. Whether the Act, as construed by the Board, is unconstitutionally vague under the First Amendment or the due process clause of the Fifth Amendment.

4. Whether the Act violates the due process clause of the Fifth Amendment by not allowing petitioner to relitigate whether the Communist Party was a Communist-action organization.

5. Whether the Board's reliance on evidence predating the passage of the Act violates the due process clause of the Fifth Amendment or the *ex post facto* clause.

6. Whether the registration provisions violate the self-incrimination clause of the Fifth Amendment.

7. Whether the disabilities imposed by the Act on Communist-front organizations and their members are constitutional.

STATUTE INVOLVED

The pertinent provisions of the Subversive Activities Control Act, 50 U.S.C. 781, *et seq.*, are set forth in the Appendix to petitioner's brief, pp. 1a–15a.

STATEMENT

The Attorney General began this proceeding on April 22, 1953, by filing with the Subversive Activities Control Board a petition for an order requiring petitioner to register as a Communist-front organization under the Subversive Activities Control Act (R. 74). Hearings were held, and on May 18, 1955, the hearing member of the Board issued a decision recommending that petitioner be ordered to register (R. 76). On December 21, 1955, the Board issued a Report and Order determining petitioner to be a Communist-front organization and ordering it to register (R. 74–214).

On December 17, 1963, the court of appeals, one judge dissenting, affirmed the Board's order (R. 215–232). Because of "the tremendous volume of the record of this evidence" and "the almost numberless

facets of fact involved," the court invited petitions for reconsideration, to give the parties an opportunity to refer specifically to any evidence which might have been overlooked (R. 229). Petitioner filed such a petition, which the court denied on February 17, 1963 (R. 233).

The evidence and findings of the Board are as follows:[1]

1. *Background.—a. The World Communist Movement.* The Board heard extensive evidence and discussed at length the world Communist movement and its connection with the American Communist Party (R. 78–87). Of particular importance is the evidence concerning the use of the United Front[2] by the Communist movement and the various Communist parties. This tactic involves working with and through non-Communist organizations, and has several different

[1] In supporting the statements made, we refer first to the evidence—the transcript of the proceedings before the Board ("Tr.") or exhibits introduced either by the Attorney General ("A.G. Ex.") or by petitioner ("P. Ex.")—then to the Board's reference, if any, to this evidence in its Report ("R."). Some of the Board's findings are contained in the portion of the hearing member's recommended decision (R. 1–74) which was adopted by the Board as its own findings (R. 89).

Much of the evidence supports both petitioner's control by, and support of, the Communist Party. As to such evidence, we have placed it within the portion of the Statement to which it seems most relevant.

[2] The United Front is also discussed in Appendix B to the government's brief in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board*, No. 44 this Term.

forms. Communist organizations may participate openly with other organizations in a certain movement, or Communist members may attempt secretly to infiltrate and control existing organizations (Tr. 2295, 2425, 2615–2616; R. 85). One of the principal methods followed in the United Front strategy is to label Communism's principal enemies as fascist in order to attract as many non-Communist allies as possible (Tr. 131–139, 2674–2679; R. 85). As the Board summarized the evidence (R. 85–86):

> It is also established that in connection with world communism's united front movement, the term "fascist" or "fascism" is carefully and designedly used to label the chief enemies of Soviet Russia (fascist or otherwise), and to serve Communist interests, in an endeavor to win them as many allies as possible through its application at any given time. This technique is the center of Communist strategy and is grounded on Stalin's *Foundations of Leninism* which teaches that with the vanguard alone victory is impossible, and hence it is necessary for Communists to mobilize the support of many who are not Communists. In order to do so, it is necessary to raise issues which do not involve pitting communism against something else and attempting to rally masses in support of communism, but, rather, involves rallying them against or around another ostensible objective.
>
> The real objective is always to get the maximum number of supporters that can be moved along the path of the Communist line for any particular period. "Anti-fascism" and "Span-

ish fascism" were used pursuant to this strategy and tactic as a means of including hundreds of thousands of supporters to follow the Communist line for Communist purposes, leading ultimately to Communist domination.

b. The International Brigades. The International Brigades were set up in Spain beginning in the fall of 1936 and first participated in the Spanish Civil War in November of that year (Tr. 2976; R. 87). There were five International Brigades. The Fifteenth, consisting chiefly of Americans, Englishmen, and Canadians, is of principal interest here (Tr. 1074; A.G. Ex. 25 (p. 5) R. 87). Andre Marty, who was a member of the Executive Committee of the Communist International (the Commintern) and a leading French Communist, was the chief political commissar of the International Brigades and was considered by the members of the Fifteenth Brigade as their supreme head; Luigi Gallo (also known as Luigi Longo), who was then a high official of the Italian Communist Party, was commissar inspector of the International Brigades and second in authority to Marty (Tr. 495, 633, 685, 813, 831, 856, 910, 995, 1074, 1124–1125, 1253, 1492, 1568, 2976, 2979, 4262; A.G. Exs. 25, 83, 89; R. 87–88).

The Fifteenth Brigade was composed of a number of battalions. The first arrivals in Spain from the United States were formed into the Abraham Lincoln Battalion, which had an original strength of 400 to 500 men. Later arrivals were formed into the George Washington Battalion, but, after severe losses in battle, a single battalion was formed which was first

called the Lincoln-Washington Battalion, and later the Abraham Lincoln Battalion (Tr. 298, 629, 1074, 2433–2434, 3444, 3449–3450; A.G. Ex. 10; R. 88). Since the Fifteenth Brigade was often referred to in the United States as the Abraham Lincoln Brigade, we will for convenience refer to the two American battalions as the Abraham Lincoln Brigade (Tr. 629, 1074, 2435, 3444, 3447–3450, 4084; A.G. Ex. 10; R. 88).

At an enlarged meeting of the American Communist Party's National Committee (or Politburo, as it was also called) in 1936, Earl Browder, the Party's national chairman, stated that the Communist International had ordered the Communist Parties throughout the world to furnish soldiers for an international brigade in Spain; that the American Communist Party had been assigned a quota of men; and that it would obey this order (Tr. 2617, 2624; R. 1).[3] Browder stated that A. W. Mills, a high Party functionary and a member of the Politburo, would be put in charge of the political preparation of those going to Spain (Tr. 2617, 2751–2752; R. 1). The Party would seek to recruit left-wing socialists and others with similar views, but the battalion was to be overwhelmingly Communist in personnel (Tr. 2617–2618, 2622; R. 1). The formation of the Abraham Lincoln Brigade was discussed at National

[3] The findings of the Board cited on pp. 7–17 of the Statement are in that part of the Recommended Decision of the hearing examiner (R. 1–74) which were specifically adopted by the Board (R. 88–89).

Committee meetings at which John Lautner was present and questions concerning the Brigade's organization, recruitment of members, financing, and other support were also discussed in Central Committee plenums (Tr. 83–86; R. 1–2).

Browder and William Foster, then a member of the National Committee, in their reports to the Committee, constantly reiterated that the Brigade was a Communist Party responsibility and that the overwhelming majority of its members were Communists (Tr. 2706, 2715; R. 2). District organizers of the Party were ordered to furnish a certain number of men to go to Spain (Tr. 2707; R. 2). Pressure was brought to bear upon Party members to respond by stressing that this was a Party obligation (Tr. 2707–2710; R. 2).

High Party functionaries went to Spain themselves for a number of purposes, such as to handle organization and finances of the Brigade (Tr. 2636; R. 2–3), to work with the Soviet secret police in Spain (Tr. 2621–2622, 2680–2681; R. 3), to strengthen the morale and Communist consciousness of the men fighting there (Tr. 2623; R. 3), and generally to advance Communist interests in Spain (Tr. 2624; A.G. Ex. 12; R. 3).

Six of the witnesses presented by the Attorney General, Gladnick, Harris, Hecht, Herrick, Horan, and Maken, had gone to Spain to serve in the International Brigades. All, with the exception of Harris,

were Party members at the time. Each of the witnesses who went to Spain, went under sponsorship of the Communist Party (Gladnick: Tr. 1476–1483; R. 5; Herrick: Tr. 482–483; R. 3–5; Maken: Tr. 707–711, 721; R. 6–8; Horan: Tr. 1162, 1164–1165, 1169; R. 8–9; Harris: Tr. 1938–1948, 2041; R. 10; Hecht: Tr. 2420; R. 8). For example, Herrick, who was a Young Communist League member, after indicating his desire to fight in Spain, was taken to Party headquarters for interviews with a section organizer, a Comintern representative, and other Party members (Tr. 481–482, 1478; R. 3–5). After Herrick's Party reliability had been vouched for, he was ordered to report to a guarded hall in lower Manhattan for training and drilling with a number of other men (Tr. 483–484, 488; R. 3–5). Strictest secrecy was maintained and the group was addressed by a Comintern representative and other Communists who had fought in Spain (Tr. 484–485; R. 3–5). Some of these talks concerned the role of the Soviet Union in Spain and indicated that the group were going to fight in Spain for the policies of the Party and the Communist International (Tr. 486, 1483; R. 4). Arrangements for Herrick's trip to Spain were made by Intourist, a Soviet Union tourist agency (Tr. 488, 491–492; R. 4). Before the group left, Earl Browder told its members that they were going to be forged in the fire of combat and that upon their return to the United States they would be in the forefront of the struggle for American

Communism; that they would no longer be theoretical Communists but would be true fighters for it (Tr. 1483–1484; R. 4). The experiences of each of the other witnesses of the Attorney General who went to Spain were similar (see R. 3–10).

This testimony is supported by considerable documentary evidence. The official organ of the Comintern's Executive Committee in May 1938 stated that the International Brigades were selected units formed of anti-fascist volunteers in reply to the call of the Comintern to render practical aid to the Spanish people (A.G. Ex. 5; R. 13). The official report of Earl Browder to the Party's Central Committee in July 1937 emphasized the high percentage of Party members in the Brigade (A.G. Ex. 3; R. 14). Browder's report to Party functionaries in December 1937 stressed that functionaries should continue to maintain the Brigade by supplying replacements and recruits and that it was the duty of the Communist Party to do so (A.G. Ex. 6; R. 14).

While in Spain the Abraham Lincoln Brigade had an official organ called the *Volunteer for Liberty* (Tr. 795, 806; R. 17). This paper was controlled by the American Communist Party and reflected its policies (Tr. 804–808, 815–819, 830–833; R. 16–17). In addition, Communist publications were predominant in the reading material which was furnished the men in the Abraham Lincoln Brigade, and included the American and British *Daily Workers* (Tr. 1218–1219; R. 19),

New Masses, The Mid-West Daily Record, The People's World (Tr. 1219; R. 19), *Inprecor* (Tr. 519, 835, 2440; R. 19), *The Moscow Daily News* (Tr. 835; R. 19), and a great deal of literature published by the Spanish Communist Party including pamphlets of speeches by leading Communists (Tr. 1219; R. 19). One witness, Horan, testified that not until the end of the Spanish war did he see anything but "Party-line publications" while in Spain (Tr. 1219–1220; R. 19). The Party literature was normally brought to the political commissar, who distributed it to the men (Tr. 1220–1221; R. 19).

Such non-Party literature as was received was censored. Witness Maken had the duty of censoring magazines from the United States and England such as *The Saturday Evening Post, Collier's,* and *Harper's,* before they were distributed to the troops (Tr. 798–800, 833–834; R. 19). Censorship was intended to remove any unfavorable reference to the Soviet Union, the international Communist movement, or the Communist Party (Tr. 833–834; R. 19–20). The mail of the individual Brigade members was also censored (Tr. 510–513; R. 20). Herrick was assigned to the task of removing all criticism of Communist policy in Spain and he performed his work under the direction of a Comintern agent and a high functionary of the German Communist Party (Tr. 501, 551–552, 695–696, 1245; R. 20).

Members of the Abraham Lincoln Brigade were disciplined for dissidence or breaches of Party discipline

and in some instances expelled from the American Communist Party for their actions in Spain. For example, Herrick had begun to express certain political doubts as to the role of the Party in Spain and was called in by his superior and warned to be a "good boy" or to suffer the consequences; Herrick understood this to mean that he should no longer oppose Party views or he would be jailed and possibly executed (Tr. 508–510; R. 21). Herrick was subsequently assigned a task in which he could prove his Party loyalty (Tr. 511–513; R. 21). Gladnick was told by John Gates, a high Party functionary and a Brigade political commissar (Tr. 1257; R. 22), that an individual had been executed because he criticized the Party and the Communist movement (Tr. 1534–1535; R. 22). Other individuals were disciplined for joining a rival labor union (Tr. 1213–1214, 1216–1217, 1237, 1245–1255; R. 22–23), or for making critical remarks about Communist activities in Spain (Tr. 845–859, 963, 1089–1090, 1216–1217, 2045–2046; R. 23).

As an aspect of Communist discipline and indoctrination, political commissars, who were overwhelmingly Communist, functioned throughout the brigades and on every level of command in the Fifteenth Brigade (Tr. 496, 656, 686, 745–746, 1053–1056, 1207–1208, 2435–2436, 3943–3944; R. 23–29). The commissar system was modeled after that of the Soviet army (Tr. 496, 745–746, 1215, 1492; R. 24). The commissar was the political head of the military unit and, although military commanders had supremacy in military matters, they were in the final analysis under

the supervision and control of the commissar (Tr. 496, 747; A.G. Ex. 5 (pp. 448–454); R. 26). The commissar's function was primarily to assure that the soldiers were properly indoctrinated politically (Tr. 496, 656, 686, 1053–1056, 1207–1208, 2435; R. 26).

A number of political commissars in the Brigade, including those on the highest levels who were also Communist Party members, later became leaders or members of petitioner. These included Joe Brandt, Archie Brown, Fred Keller, John Gates, and at least 17 others (*e.g.*, Brandt: Tr. 824, 826, 861, 1076, 1080; Brown: A.G. Ex. 52; R. 29).

Communist Party members became leaders in the Brigade immediately upon arrival in Spain either as military commanders or as political commissars (Tr. 745; R. 29); these commissions and titles had been awarded by the Party in New York (Tr. 495, 941–942, 1490–1491; R. 29). The first military commander of the Abraham Lincoln Brigade was a Party member, but he was summarily removed and replaced by a Party functionary who had come directly to Spain from Moscow (Tr. 649–650, 748, 764–765; R. 29–30). Subsequent commanders of the Brigade were also Party members (Tr. 748, 764–765, 789–791, 985–986, 1496, 1649–1650; R. 30). Such officers were referred to in Spain as "ninth floor generals,' referring to the ninth floor of the Party headquarters in New York where the Politburo was located (Tr. 749; R. 29). When a delegation of Brigade soldiers was formed to complain about the tremendous number of casualties in the battle of

Jarama in February 1937, the delegation went to Brigade headquarters and demanded, among other things, that contact be made immediately with the American Communist Party (Tr. 1502; R. 30).

Robert Minor had the job of recruiting agents for Soviet intelligence from among the Brigade members upon orders of a member of the Russian Mission (Tr. 1533–1534; R. 34). Minor told witness Gladnick that the Russians had organized a diversionist group for demolition and behind-the-lines activity, and that when the war was over in Spain its members would be used throughout the world (Tr. 1531–1534; R. 34). John Gates, Bill Lawrence, and Steve Nelson, who were political commissars, also sought recruits who were taught sabotage and commando tactics by Russian experts and then became members of the Soviet Communist Party for use in the future wherever the Soviet Union directed (Tr. 1522, 1533–1534, 1550–1551; R. 34; see also A.G. Exs. 23, 24 R. 35).

The Hearing Examiner concluded, and the Board agreed, that the Brigade was dominated and controlled by the American Communist Party and the Comintern; that its members were subject to, and the recipients of, Communist discipline; that dissidence by Brigade members from Communist policies in Spain was not tolerated and was severely punished; that a political commissar system organized under the leadership of Comintern agents and dominated by Communists functioned throughout the International Brigades for the purpose of maintaining the political reliability of troops from the Communist viewpoint

and of giving Communist indoctrination; that the official organ of the Brigade was controlled by the American Communist Party and reflected Party policy; that Brigade reading material was restricted to predominantly Communist publications, and that other publications were censored by Communists as a means of maintaining Communist ideology in the Brigade; that the mail of Brigade troops was checked to ascertain political dissidence; that Brigade members recruited agents for Soviet intelligence from among Americans in Spain; and that Brigade members were trained by Soviet personnel in Spain and functioned as Soviet agents, all in furtherance of the policies and objectives of the world Communist movement (R. 37–38).

The Party expected that the members of the Brigade returning from Spain would become active in Party work (A.G. Exs. 6, 12, 238; R. 64–68). Witness Horan was told by a Party functionary that many young men were brought into the Party as a result of its aid in Spain; that this was the best that ever happened to the Party in many years; that it was really building up the Party's popular front in the United States; and that, in recruiting persons to go to Spain, the Party was now reaching many people that it had never been able to reach (Tr. 1235–1236; R. 70–71). Witness Maken testified that there was a constant effort to recruit members of the Brigade into the Communist Party (Tr. 752; R. 70). He stated that "[w]e had a slogan ['E]very member of the Brigade a member of the Communist Party' " (Tr.

752; R. 70). Maken said that the consensus of numerous Party meetings in Spain was that the members of the Brigade believed that their experience in Spain would make them better Communists upon their return to the United States, and that, having been tested in action, they could take greater leadership responsibilities in the American Communist Party (Tr. 752–755; R. 70). Similar evidence was given by Gladnick (Tr. 487, 529, 1531–1532, 2141; R. 70).

After having been demobilized about the first week of October 1938, Horan attended a meeting in Spain where Milton Wolff, later petitioner's national commander, was present and Robert Minor, a Communist Party functionary, was the main speaker (Tr. 1225–1226; R. 71). Minor recounted what the men had gone through, stating that it was their duty to use in the United States what they had learned in Spain to advance the American Communist Party and to raise the political education of the American people; that they were now firm Communists, prepared by their experiences to do outstanding work for the Party and mass organizations in the United States; and that they could help form the hard core of a new and better Communist Party in the United States, the hard core upon which the American revolution could be built (Tr. 1226–1228; R. 71). Horan had earlier heard a similar speech given by Andre Marty (Tr. 1257–1258; R. 71).

A dossier was compiled for the Communist Party's records covering the life and activities of each of the men in Spain (Tr. 1083; R. 72). Those whom the Party considered as not trustworthy were disciplined

or expelled (Tr. 861, 1084, 2453–2454; R. 72). On the other hand, Herrick, prior to returning to the United States in September 1937, was given a letter by a high Party functionary and political commissar recommending him for a Communist Party training school in the United States (Tr. 520–522, 524–525; R. 72).

The return of the Brigade from Spain, like its original organization, was controlled and supervised by Party functionaries under the international Communist movement. Maken returned with a group whose finances were supervised by Dave Leeds, formerly the Party's New York State financial secretary (Tr. 800, 860–861; R. 73). Herrick returned with a group pursuant to arrangements made by a Communist Party functionary (Tr. 524–525; R. 73). Gladnick and Horan provided similar evidence (Tr. 1264–1265, 1514–1521; R. 73–74).

The Board found that (R. 73):

> [The American Communist Party] functioned as an integral part of the world Communist movement's anti-Fascist united front in aid of [the Spanish Communist Party] and the Soviet Union in Spain, and that through the utilization of this united front tactic thereby increased its own power and influence within the United States and provided itself with combat-trained cadres for future leadership.

c. The Friends of the Abraham Lincoln Brigade. During the time the International Brigades were operating in Spain, an organization called the Friends of the Abraham Lincoln Brigade was operating in

the United States for the purpose of raising funds to finance the operations of the Abraham Lincoln Brigade (Tr. 671, 3530–3531; A. G. Ex. 102; R. 93–94). Its officers and staff members were largely Party members and functionaries, including David McKelvy White and Phil Bard who had returned early from Spain to engage in this work (Tr. 671, 3696; Bard: 57, 518, 542, 598, 618, 2329–2330, 2633; White: 229, 2700, 2759; R. 93). The Friends functioned in conjunction with the Party and were supported by the Party organization (Tr. 229, 671, 3530–3531, 3969; A. G. Ex. 102 R. 95).

Party funds were given to the Friends to be distributed to men returning from Spain (Tr. 527–529; R. 93). The Friends also provided the Brigade's veterans with clothing, medical and dental services, and legal assistance (Tr. 527–528, 862–863, 1520–1523, 2442–2443, 3048, 3212–3215, 3510; R. 94). For example, Hecht and Gladnick, who were Party members, were furnished legal aid when, upon re-entering the United States, they were detained by Immigration authorities (Tr. 1520–1523, 2441–2443; R. 94). Brigade veterans were sent through the organization to the Party's resort camp, Camp Beacon, which was also used for the Party's National Training School (Tr. 529–530, 4198–4199; R. 93). Fund raising affairs and rallies were conducted jointly by the organization and the Party in which Brigade members, some of whom were also Party members like Harris, Herrick, and Maken, participated (Tr. 670–672, 870–872, 2054–2055; A.G. Ex. 102; R. 93–94).

The Friends also used Brigade members to promulgate Party progaganda. One example of this was described by witness Herrick with respect to a statement for publication prepared for *Life* magazine. A Friends' publicity agent rejected Herrick's statement that he had gone to Spain as a member of the Communist movement and told him to say rather that he had gone because he was Jewish and wanted to join in the fight against fascism (Tr. 537–538; R. 94). Herrick also testified that he was directed to make speeches and to say things that were not true (Tr. 670–672; R. 94). Witness Harris was told by a member of the Friends that his letters from Spain had been read at Party and other meetings for their propaganda value (Tr. 537–538, 670, 672, 2054–2055; R. 94).

The Board concluded (R. 95):

> The Friends of the Abraham Lincoln Brigade was an organization connected with the Communist Party which functioned to raise funds and provide services in connection with the Party's program involving the Abraham Lincoln Brigade and also functioned as a propaganda outlet for the Party with respect to this operation.

In December 1939, upon its formation, petitioner took over the responsibilities of the Friends insofar as rehabilitation of veterans was concerned and the Friends passed out of existence (A.G. Exs. 59, 102; R. 95).

2. *The Veterans of the Abraham Lincoln Brigade.* Petitioner, except for honorary members, is an organization whose membership is composed exclusively

of veterans of the Abraham Lincoln Brigade (Tr. 141–142, 2639–2640, 2774–2775, 3334, 3591, 4297–4298; R. 95, 121). It was officially formed at what is known as the "Third National Convention" of the Veterans of the Abraham Lincoln Brigade, which took place on December 23–24, 1939.[4] As originally formed, petitioner's constitution provided for four national officers, namely national commander, adjutant commander (which never functioned), secretary-treasurer, and editor of its official organ, *The Volunteer for Liberty* (Tr. 3627–3628, 4034; R. 106). The organization also had a National Executive Committee, which, according to its constitution, exercises authority over petitioner between national conventions (A.G. Exs. 59, 62, 104; R. 107). The organization's constitution provided for local posts to be organized and maintained in various cities throughout the country (A.G. Ex. 59; R. 102). These posts operated under the direction of petitioner's national headquarters in New York City (Tr. 1358, 1364–1365, 1402, 2067–2070, 2512–2513; R. 102). The posts remaining in existence at the time of the hearing included those in Chicago, Los Angeles, New York, and San Francisco (Tr. 1098, 1359, 1368, 1372, 1400, 1403; A.G. Ex. 218, 220, 224; R. 102).

a. Control of Petitioner by the Communist Party. Petitioner was actually started by the Party in 1938 and 1939 before the veterans returned from Spain.

[4] The organizing convention was actually petitioner's first, the earlier ones presumably having been held by the Friends of the Abraham Lincoln Brigade (Tr. 4008–4009; A.G. Ex. 59; R. 100).

Louis Budenz, a leading official of the American Communist Party, testified that the Politburo had a series of discussions in 1937 and 1938 concerning the organization and direction of petitioner (Tr. 2625–2629; R. 95). As a result, beginning in late 1937, the Politburo issued several directives for petitioner's organization (Tr. 2626, 2629; R. 95). Members of the Politburo and representatives of the Communist International (which ran the world Communist movement) were appointed to aid in the formation and supervision of petitioner and these individuals reported periodically to the Politburo on their activities in carrying out this assignment (Tr. 2618, 2625–2629, 2632–2634, 2641–2642, 2674, 2750–2753, 2759–2760; R. 95). Petitioner's constitution was discussed at Politburo meetings in 1939 and, after submission to the Party's lawyers, was approved by the Politburo (Tr. 2679–2680; R. 96). John Lautner, another Party "functionary"[5] was present at a central committee meeting of the Party in 1938 when Earl Browder reported on the plans for setting up petitioner (Tr. 141–142; R. 96).

In early 1938, Budenz was the editor of the *Mid-West Daily Record* in Chicago, which was a Party newspaper, and its associate editor was Paul Burns, another Party official (Tr. 2626–2627; R. 96). Budenz was told that Burns had been chosen national commander of petitioner (Tr. 2626–2627; R. 96). Burns informed Budenz that petitioner's original officers had been handpicked by a Comintern repre-

[5] Lautner defined a "functionary" as a Party member under complete Party discipline (Tr. 51).

sentative in New York and that he (Burns) was in touch with Politburo and Comintern representatives (Tr. 2756–2757; R. 96). Budenz, in his position as a member of the Party's Illinois State Committee, also received other reports on the progress of petitioner's organization in the Chicago area (Tr. 2613, 2625, 2627–2629, 2757–2759; R. 96). During petitioner's formative years in 1937 and 1938, the Party advanced money for meetings, publications, and other needs (Tr. 2679–2680, 2738–2739, 2759–2760; R. 96). Early in 1939, Morris Childs, the Illinois secretary of the Communist Party, addressed petitioner's Chicago post and stated that it could now be told that the Party had recruited the men to go to Spain and had also organized petitioner (Tr. 1269–1270; R. 99).

Witness Herrick, a member of the Young Communist League at that time, testified that his first contact with petitioner took place in early 1938 when, at the request of a Party functionary he attended a meeting for returned veterans, at which the functionary presided (Tr. 533–535; R. 98). At this meeting, Steve Nelson, who was a former political commissar and who had been made a member of the Party's Central Committee, settled a controversy which arose (Tr. 535–536; R. 98). Herrick testified that Nelson's statement was interpreted as an order from the Party because he spoke with "ultimate authority," since all present knew him to be a member of the Party's Central Committee (Tr. 687–688; R. 98). Witness Maken was told upon his return to the United States that before he could join petitioner he must see the

secretary of the Party's National Control Commission (Tr. 861, 865–867; R. 98). When Maken went to Party headquarters, he was told that he would have to work his way back into the Party by participating in Party organizations such as petitioner because of minor disagreements he had had with his Party supervisors in Spain. If after a suitable period his work was worthy and his attitude correct, he could rejoin the Party (Tr. 867–871; R. 99).

The Board found that (R. 100):

> [Petitioner] was formed by, and with the aid of the Party in 1938, prior to the return of the main body of veterans; that the Party established [petitioner] under its control, installing a Party functionary as its National Commander * * *.

In 1939, months prior to petitioner's initial convention, David McKelvy White, a Party member, reported to a meeting of the Politburo in Chicago on the planning for it (Tr. 2759–2760; R. 100). Milton Wolff, who was a Party functionary, opened this convention and was chairman of the convention arrangements committee (A.G. Ex. 59; Wolff: Tr. 144, 151–152, 230, 1226, 1952, 2143–2144, 2509, 2642, 2703, 2753–2754, 3961, 3990–3992, 4126, 4223–4224, 4231; R. 101). White delivered the main report for petitioner's executive committee (Tr. 229, 2700–2701, 2759; A.G. Ex. 59; R. 101).

The convention's Presiding Committee of five persons included David White, the chairman, Milton Cohen, and Vaughn Love, all three of whom were

Communist Party members (Cohen: Tr. 1276–1277, 1334, 1357, 1363; Love: 1231–1232, 1373; R. 101). The Convention Committee consisted of seven persons and included John Robinson, the chairman, Milton Wolff, and Fred Keller, who were Party functionaries (A.G. Exs. 59, 256; Robinson: Tr. 1481, 1564, 1975, 2029, 2073–2075, 2079, 2132, 2191–2192, 2207, 2281–2282, 2289, 2430, 2453; Keller: Tr. 919, 1373, 1950–1951, 1994; R. 101). A national executive committee of nine members was chosen, of whom three, Carl Geiser, Bob Raven, and Archie Brown, were Party members or functionaries (A.G. Ex. 59; Geiser: Tr. 1966–1967; Raven: Tr. 156–158, 163, 177–180, 1975, 2633, 2642; A.G. Ex. 12 (p. 21); Brown: Tr. 272; R. 101). Unanimously elected as national officers were Milton Wolff, national commander, Luchell McDaniels, adjutant commander (an office which, as noted above, has never functioned), Gerald Cook, secretary-treasurer; and Leonard Levinson, editor of the *Volunteer for Liberty*; Wolff and Levinson were Party functionaries (A.G. Ex. 124 (pp. 13, 56); Levinson: Tr. 144, 366; R. 101). Wolff has been petitioner's national commander since 1939 (Tr. 3627, 4034; R. 101, 107).

The Board concluded that (R. 105):

> [Petitioner's] initial convention was held under the domination and control of the Party and that its principal officer (National Commander), who had been installed by the Party, was succeeded at this Convention by another Party functionary * * *.

Besides the national commander, the other principal officer of petitioner is the executive secretary, who was formerly, as provided in the petitioner's constitution, designated the secretary-treasurer (A.G. Ex. 59; R. 106). Indeed, now and for the past few years, the executive secretary has been the principal operating officer, handling finances as well as most other organizational business (Tr. 4079; R. 106). Since 1940, this office has been occupied during the years indicated by the following Party members or functionaries: Irving Goff, 1940 to 1941 (Tr. 144–145, 152, 197–198, 200, 364–365, 372, 530, 1873–1875, 1927–1928, 2140, 2298, 2327, 4037–4038, 4175–4176, 4244, 4286; A.G. Exs. 22, 34, 69, 70, 78–79, 97 (p. 1), 145, 193, 206); Jack Bjoze, 1942 to 1943 (Tr. 156–157, 176, 359, 873, 1370, 1461–1462, 1970–1971, 1980, 2020, 2088, 2090–2092, 2101–2104, 2107, 2127, 2143, 2181, 2201, 2215, 2225, 2300–2303, 2313, 2367, 2395–2397, 2458, 2467, 2504, 2801–2804, 4044; A.G. Exs. 64, 65, 71–76, 78–80, 97, 136–138, 141, 145, 195, 143, 209); Harold Smith, 1944 (Tr. 227–229, 272, 2511–2512, 2659, 2692, 3717–3720, 3723, 4047–4048; A.G. Exs. 2, 44, 59, 60, 103 140, 150, 154, 155); Leonard Lamb, 1944 to 1945 (Tr. 144, 154, 367–368, 372, 861, 1086, 2071, 2072, 2082, 2096, 2187, 3890–3894; A.G. Exs. 140, 142 (p. 2), 145); David McKelvy White, 1945 (Tr. 3725–3726; A.G. Exs. 22–53); Edward "Frenchy" Robinson, 1945 (Tr. 144, 154, 368, 505, 923–925, 1518–1520, 1948, 1961–1962, 1994, 1999, 2009–2011, 2077–2079, 2082, 2190–2191, 2291–2292, 2506–2508, 4049–4050; A.G. Exs. 66, 75, 101, 145, 189); Moe Fishman, 1950 to present

(Tr. 1944–1945, 1974, 1975, 2002–2007, 2027, 2087–2089, 2097, 2201, 2202, 4072–4073, 4079, 4272, 4337–4338; R. 105, 107). Wolff testified that he got Fishman the position of executive secretary, which has not been an elective post for many years (Tr. 4337–4338; R. 107).

The following Party representatives have been on petitioner's National Executive Committee: Vic Allen, Barney Bailey, Alvah Bessie, Moe Fishman, Louis Gayle, Carl Geiser, Irving Goff, Daniel Groden, Fred Keller, Felix Kuzman, John Gates, Vaughn Love, Edward Robinson, Milton Wolff, Archie Brown, and David McKelvey White (A.G. Exs. 9, 59, 62, 97, 144, 145; P. Ex. 24; Allen: Tr. 2503–2504; Bailey: Tr. 1180–1185; Gayle: Tr. 1332–1336; Kuzman: Tr. 144–156, 2633; R. 107). In 1952, petitioner's nine-member Executive Committee included six Party members, of whom four were functionaries: Irving Weissman, Steve Nelson, Harold Smith, Vaughn Love, Daniel Groden, and Alvah Bessie (A.G. Ex. 103; Weissman: Tr. 154, 335; Groden: Tr. 2505, 2513; Bessie: Tr. 907–911, 2635; R. 29, 49, 68–70, 99, 101, 107, 114, 116).[6]

The editor of petitioner's official organ, the *Volun-*

[6] Petitioner has conferred honorary memberships and appointed honorary officers. For example, at the 1939 convention, an Honorary Presidium of ten persons was selected, six of whom were functionaries of the Committee and/or the Spanish Communist Party (Tr. 361–362, 1593, 2135, 4080–4082; A.G. Ex. 59 (p. 1); R. 103). Gerhart Eisler, Earl Browder, Robert Minor, Paul Robeson, and Joseph North were also honorary members of petitioner and, except for Eisler, who was a Comintern agent, all were Communist Party members or functionaries (Tr. 361–362, 2094–2095, 2125, 2211, 4080–4082; A.G. Exs. 59, 143 (p. 7); *e.g.*, Robeson: Tr. 1980, 2092, 2688–2689; North: Tr. 132, 1564, 836, 4081–4082; R. 103).

teer for Liberty, which has been issued on an irregular basis, was from 1939 to 1941, Leonard Levinson; during 1941, Al Prago; and during 1946 and 1947, Harold Smith. They were all established Party functionaries (Tr. 1306, 1545, 2635, 3236; A.G. Ex. 59; Prago: Tr. 145, 153, 193, 374, 1889–1890, 1929–1930, 1972, 2516, 2839; R. 101–102, 106). Levinson, Prago, and Smith also constituted the editorial board in 1944 (Tr. 3822–3833, 3988, 4079; A.G. Ex. 195; R. 106).

Edward Horan, then a Party member, was in 1939 editor of the Chicago supplement of the *Volunteer for Liberty,* but he was supervised by a committee which included a Party functionary, and, in actuality, Horan had nothing to say about the content of the publication (Tr. 1306; R. 106–107). Syd Harris, who at the time of the hearing was secretary of petitioner's Chicago post, attended Communist Party meetings with Horan and was a Party member (Tr. 1372–1373, 1400–1401; R. 107). Horan testified that at various times there was a person in the Chicago post designated as a Party representative who would bring instructions from the Party (Tr. 1355, 1358; R. 107). At a meeting held in petitioner's offices in 1941, Alfred Wagenknecht replaced Sigurd Simonsen, who was such a Party representative, with Moe Teitelbaum (Tr. 1334, 1357, 2694–2695; R. 107). Wagenknecht was a Party functionary of very long standing who was then a member of the Party's Illinois State Committee but not of petitioner (Tr. 1333–1334, 2694–2695; R. 107). Among other Party representatives in the Chicago post were Izzy Tivin, Ernest Romero, Gil Lang, and Milton Cohen (Tr. 1357; R. 107). At least one Party representative was present at every

meeting of the Chicago post which Horan attended (Tr. 1355, 1357–1358; R. 107–108). Each was conspicuous by his manner and his statements, such as by giving instructions that the Party had decided that petitioner should undertake certain activities (Tr. 1276–1277, 1352, 1355, 1357–1358, 1363, 1372–1373, 2694–2695; R. 107–108). During Horan's membership, the Chicago post never functioned autonomously; the post received orders principally through the Chicago District and Illinois State organizations of the Party (Tr. 1282, 1331, 1333–1334, 1336, 1358; R. 108).

The Board concluded (R. 109):

> [W]ithout exception [petitioner's] principal active officers, since its inception, have also been functionaries and representatives of the Party, as have a substantial number of its responsible active subordinate officers.

Representatives from petitioner reported to the Party's National Committee after petitioner's formation and during the entire time Budenz was in the Party until 1945 (Tr. 2629, 2641–2643, 2759–2760; R. 110). For example, Budenz testified that at an enlarged meeting of the Party's National Committee in early 1940 Milton Wolff reported on petitioner's 1939 convention (Tr. 2754; R. 110). Lautner also testified that during the Party's National Committee meetings in 1940 and 1941 Robert Minor and others reported concerning petitioner (Tr. 361; R. 111). Such reports on most occasions were given by a Party mem-

ber who was also a member of petitioner (Tr. 2641; R. 110), but on occasion a non-member of petitioner made the report, such as Roy Hudson, who functioned as a Politburo representative to petitioner (Tr. 2632–2633, 2641–2642; R. 110). Budenz testified that it was common custom for the Politburo to have a representative working with members of other organizations (Tr. 2642; R. 110).

The Board concluded (R. 110–111):

> There were constant reports to the [Communist Party] through the years on [petitioner], some specifically devoted to it, and others including it as a part of a broader report of Party activities.

Membership in petitioner was respected in the Communist Party because it signified that an individual had proven himself and his Party dedication by going to Spain. Lautner testified that Party leaders singled out members of petitioner as the "flower" of the Party, the "force that fought and proved their loyalty and steadfastness in the face of danger for Party ideology" and who had demonstrated loyalty in carrying out Party assignments (Tr. 365; R. 113). He testified that Earl Browder and other Party leaders frequently emphasized that, since petitioner's members had proved themselves as devoted and loyal members of the Party, they deserved special consideration with respect to promotion (Tr. 151, 365, 1226, 1236, 1269, 1352, 1483–1484; R. 113).

In fact, this consideration was given. Lautner testified that petitioner's members had been appointed to the Party's National Committee, become national secretary of the Party's Control Commission, become district or national organizers or regional directors of Party regions, and become Party functionaries and officials in the various state and district units of the Communist Party (Tr. 143–155; R. 115–116). Budenz likewise testified that Steve Nelson, a member of petitioner, was chosen for the Party's National Committee, Paul Burns (see p. 21 above) was made associate editor of the Party's *Mid-West Daily Record,* and Alva Bessie, another member of petitioner, became a writer in Hollywood through the Party apparatus there and obtained a position on the editorial staff of *New Masses,* a Party publication (Tr. 907–911, 2634–2635, 2682–2683; R. 114). In 1946, Nelson was made Chairman of the Party's Nationality Groups Commission and discussed Party problems with members of petitioner at Party headquarters in New York City (Tr. 359; R. 112).

Budenz's and Lautner's testimony was corroborated by the experiences of witnesses Horan and Huber. For example, Horan was told by the Party prior to going to Spain that it would be a basis for further recognition and advancement (Tr. 1236; R. 113). Upon his return from Spain, he attended a meeting of petitioner where Morris Childs, the Party's Illinois State chairman, stated that petitioner's members would receive recognition for what they had done in Spain (Tr. 1269; R. 113). During this speech

Childs listed many examples of petitioner's members who had been given important posts in the Party, including positions with Party papers or as organizers, and Childs stressed that these men were "not arm chair revolutionaries and that they would put new spirit into the Communist Party" (Tr. 1236, 1269, 1276–1277, 1363–1364; R. 113–115).

Petitioner, in its official organ the *Volunteer for Liberty,* emphasized the participation of its members as Party officials in the Party's 1944 National Convention. This participation included the election of petitioner's members to the presiding committee which also served as a nominating committee, to the resolutions committee, and as vice-presidents and members of the Party's National Committee (A.G. Ex. 149 (p. 4); R. 111).

In addition to Party positions being given to petitioner's members, Budenz testified that the Party branches were instructed to attempt wherever possible to obtain employment for petitioner's members in unions, offices, or factories where a Communist fraction or functionary was located (Tr. 1546, 2682–2683; R. 116). An example of such aid was given by the witness Horan. In January 1940, Dave Mates, a Party organizer for the Party in Cook County, Illinois, arranged a job for Horan as a union organizer in Iowa through the Party there (Tr. 1289–1293, 1303–1304; R. 116–117). Horan, although not then a member of the Party, having left it in the summer of 1939, was given this job because his background and experience in Spain were known, and Mates

believed him to be "all right" and felt he could be brought back into the Party (Tr. 1291–1292; R. 117). Similarly, witness Herrick obtained a job in the furrier's union through the Party (Tr. 528–533, 543–545; R. 117).

In late 1946, Huber attended the Fifth National Convention of petitioner in New York City, which opened with the singing of Spanish and Red Army songs (Tr. 1976–1977; R. 112). Seated on the stage were Milton Wolff, Paul Robeson, Benjamin Davis, and representatives of Poland, Czechoslovakia, Yugoslavia, and the Soviet Union (Tr. 1977–1978; R. 112). Davis brought greetings to this convention from the Party's National Committee, of which he was a member, and Paul Robeson, also a Party member, told the delegates to be proud of being Communists (Tr. 1976–1977, 1980–1981, 2092; A.G. Ex. 143; R. 112).

The Board concluded that (R. 113):

> [Petitioner] maintains a rapport with the Party, primarily involving activities of its officers and a substantial segment of its membership who are Party members, which places [petitioner] in a knowledgeable position of subservience to Party control and Party purposes.

Party control was facilitated by the fact that petitioner, like the Party, was a disciplined organization, which required its members, under penalty of expulsion, to accept and implement its policies. For example, in 1939 witness Maken and a few other members of petitioner believed that, during the period

of the Hitler-Stalin Pact, Hitler should still be as actively opposed as Franco had been (Tr. 889–890; R. 117). This position was contrary to petitioner's policy, which conformed with the policy of the Communist Party (see pp. 36–39 below). Maken's group formed an organization composed of the few anti-Fascist and anti-Communist veterans in petitioner, but after a few months the organization was dissolved (Tr. 890–892; R. 117). Maken's activity, however, led to his expulsion from petitioner; he was given no notice or hearing concerning his expulsion and was not present at the meeting which expelled him (Tr. 892; R. 117–118). Significantly, a notice that he had been expelled was published in the *Daily Worker* (Tr. 893, 1105; A.G. Ex. 85; R. 118). "Frenchy" Robinson told Maken in 1945 that he (Robinson) could get Maken reinstated in the Party and also in petitioner, since he was then high in the Party and, therefore, his recommendations to petitioner were accepted (Tr. 924–926; R. 112)).

Maken also testified that another member of petitioner was expelled after Fred Keller, a Party functionary and member of petitioner, presented evidence at a meeting of petitioner that the member disagreed with the Party (Tr. 919–921; R. 118–119). Witness Gladnick testified that petitioner got him a job in a union local which he immediately lost after he refused to join the Party (Tr. 1524–1526, 2500–2501; A.G. Ex. 59 (p. 23); R. 118).

Witness Hecht testified that petitioner regarded as "sound members" persons whom the Party accepted as sound (Tr. 2500–2501; A.G. Ex. 59 (p. 23); R. 118). If petitioner's members disagreed with Party positions, they were violently attacked. For example, witness Gladnick was called a "Trotskyite," a "stool pigeon," and a "deserter" when he disagreed with Party leader Steve Nelson at one of petitioner's meetings (Tr. 1529, 1588; R. 119). And petitioner followed the Party's procedures of isolating individuals who disagreed with Party positions (Tr. 919–921, 1529, 1583, 1588, 2126–2129, 2132, 2690–2694, 3132; A.G. Ex. 145 (p. 5); R. 119–120).

Petitioner also received, and responded to, direct Party discipline. Witness Lautner, as a member of the Party's Review Commission in 1948, handled charges brought before this disciplinary body by Robert Raven, who had been blinded in Spain. Raven charged petitioner with failing to discharge certain obligations concerning his financial support. He charged that he had been used as a tool by the Party upon returning from Spain, having been exploited on a national tour in which he raised many thousands of dollars, and was not being cared for financially. Lautner, as a Party official, summoned Jack Bjoze, a Party representative within petitioner, and the latter promised the Party that petitioner would fulfill its obligation. Subsequently, a flower shop was purchased for Raven and his financial security guaranteed (Tr. 156–157; R. 120–121).

Lautner also testified that the Party called upon petitioner to carry out certain functions such as furnishing members to participate on picket lines and that petitioner, in response, did as directed (Tr. 142–143; R. 121). Budenz testified about instructions which the Politburo issued to petitioner concerning a drive to increase the circulation of the *Daily Worker*. Roy Hudson told the Politburo in the summer of 1941 that petitioner would be ordered both to take the intiative in this drive and to stimulate Party membership; petitioner followed these instructions (Tr. 156, 523, 1323, 1335–1341, 1358, 2653–2654, 2657–2659, 2742–2743; A.G. Ex. 237; R. 111, 181). Witness Maken had to be cleared by the Communist Party before he was allowed to join petitioner (Tr. 924–926; R. 121).

The Board concluded that (R. 121–122):

> [T]he preponderance of evidence establishes that [petitioner] is a disciplined organization after the matrix of the Party, and that it has and continues to be subject to and responsive to Party discipline, primarily through its principal officers and a substantial portion of its membership who are Party members and functionaries.

The Board considered extensive documentary evidence reflecting the views and policies of petitioner and of the Communist Party (R. 131–178). Their positions, for example, coincided concerning the entry of the United States into World War II prior to, during, and after the Hitler-Stalin Pact and the German attack on the Soviet Union (R. 132–147); the release

of Party leader Browder from imprisonment (R. 147–148); the Government of Finland (R. 150–151); American foreign policy concerning Spain, Latin America, China, and Greece (R. 152–167); the Marshall Plan (R. 167–170); the Korean War (R. 170); Congressional committees investigating Communism (R. 171); Gerhart Eisler's deportation (R. 172); and internal security legislation (R. 173). Petitioner, on the other hand, offered no evidence of instances where its official publicized policy conflicted with the policy of the Communist Party and its national commander, Milton Wolff, testified that petitioner had never taken a stand in opposition to the Soviet Union or critical of the Communist Party or its leaders (Tr. 4238–4284, 4308; R. 178).

Petitioner adopted policies at the direction of the Communist Party and took steps to implement those policies pursuant to such direction. Prior to the Hitler-Stalin Pact, announced on August 24, 1939, both the Communists and petitioner were strongly "anti-fascist" and anti-Hitler (Tr. 125–126, 322–324, 874–875; A.G. Exs. 8, 59 (p. 2); R. 132–133). When the Soviet Union and Germany signed the non-aggression pact, a direct result was a complete reversal in Communist Party policy regarding fascism and the impending war (Tr. 388–390, 879–880; A.G. Ex. 36; R. 133–136). The Party now claimed that the Soviet Union had, by making the Pact, contributed to the peace of the world and strengthened the position of the "working class and all true democratic forces" (A.G. Ex. 36; R. 133–135). When war was

declared by Germany on Poland only a few days later on September 1 and Britain entered the war on September 2, Party leaders characterized the war as "imperialist" and an "unjust" war, and adopted the slogan: "Keep America Out of the Imperialist War" (Tr. 903–904; R. 135).

Immediately, petitioner also characterized the war as an imperialistic war. For example, Maken attended a meeting of petitioner after the invasion of Poland and shortly after the Hitler-Stalin Pact was signed. At the meeting the Pact was explained and petitioner's members were requested as Spanish veterans to carry out their responsibilities to assure the public that the Soviet Union was still the stronghold of social progress (Tr. 881; R. 136). A subsequent meeting passed a resolution stating that the conflict between Germany and France and Britain was an imperialist war and that petitioner would do its best to prevent the involvement of the United Staes (Tr. 883–886; R. 136).

Shortly after the Hitler-Stalin Pact was signed, Gladnick went to petitioner's offices and, in the presence of Milton Wolff, inquired when petitioner's next meeting would be held since he wanted to find out where petitioner stood on this question. He was given a mimeographed copy of a manifesto to read and was told that anyone who did not subscribe to the manifesto could not attend future meetings of petitioner (Tr. 1540–1541; R. 136–137). The manifesto said that the war was not one for the freedom of Europe

but was an "imperialist war" and that petitioner would struggle against aid to England and France, the theme being that the "Yanks are not coming" (Tr. 1541; R. 137).

At its initial convention in December 1939, petitioner adopted a resolution, stating "We, Veterans state this is an Imperialist War. * * * Let our Slogan be: Keep America Out of this Imperialist War. The Yanks are not Coming." At petitioner's national convention in May 1941, petitioner's national commander, Milton Wolff likewise urged, "Let us again resolve, with renewed fervor, that the Yanks are not coming * * *" (A.G. Ex. 98 (p. 4); R. 140). Witness Herrick described the change in petitioner's position as follows (Tr. 545–546):

> After Soviet Russia and Hitler's Germany signed the Stalin-Hitler pact, the line of the Party changed overnight from "Collective security against Fascism" to one of "Hands off Fascism" more or less to one where the fight and all the slogans and all the propaganda was against Britain as a bourgeois imperialist government, against the American Government for being as they called President Roosevelt at that time, a warmonger. * * * When the Communist Party changed its line from one of "Collective Security Against Fascism," the Veterans of the Abraham Lincoln Brigade changed its line from "War against Fascism" to "It was an imperialist war and Britain and France and the United States were imperialist powers" and to one of so-called neutrality in this struggle.

Petitioner not only supported the Party's new position, but sponsored or took part in rallies (Tr. 1542–1554; A.G. Exs. 96, 97; R. 138–140), participated in picket lines (Tr. 1312; A.G. Ex. 97; R. 139), provided speakers (Tr. 1309–1310; R. 140), and held street corner meetings (Tr. 1321–1322; R. 140) to support its policies on this issue.

After the German attack on the Soviet Union on June 22, 1941, there was an immediate reversal of Communist Party policy. The war was no longer considered an "unjust, imperialist war"; it was a just war due to the involvement of the Soviet Union (Tr. 330; A.G. Ex. 38; R. 140–143). The Party now advocated American participation in the war, and demanded a second front (A.G. Ex. 39; R. 143–144). Similarly, petitioner immediately launched a campaign for American involvement in what was now a "just" war (Tr. 1322–1323, 2456–2457; A.G. Ex. 30; R. 141). Petitioner called for a second front (A.G. Exs. 40, 99; R. 144–145), and held a fund raising and propaganda affair to advance this demand (Tr. 1349–1350; A.G. Ex. 101; R. 145).

The Board found that petitioner "consistently takes and advances positions on matters of policy which do not deviate from those of the Communist Party and the world Communist movement * * *" (R. 178).

The Party's control of petitioner is reflected by the aid which the Party gave to it. This aid included allowing petitioner's members to solicit funds and sell tickets to its affairs at Party meetings (Tr. 1351–1352, 1546, 2132–2133; R. 122); distributing petitioner's

solicitation cards throughout the Party (Tr. 1284–1287; R. 122); urging and directing all Party members to support petitioner's projects (Tr. 1951–1958; R. 123); and making direct contributions of funds to petitioner (Tr. 1958–1960; R. 123–124). Budenz testified that at National Committee meetings it was stressed that the Party and Party members should support all of petitioner's activities in advancing the Party's interests and ensure that petitioner was financially supported (Tr. 2643–2644; R. 124). Budenz testified that, as *Daily Worker* editor, he was under specific instructions from the Politburo to give publicity to petitioner (Tr. 2664, 2768–2769; R. 124). Lautner testified that decisions concerning support for petitioner were made within the Party's New York State Commissions, and that such support was routine (Tr. 84–86, 174–176; R. 124).

The Board concluded (R. 131):

> Accordingly, we find that the Party from respondent's inception has provided it with material aid and support and that this further evidences that respondent is controlled by the Party and is an organization which operates primarily in the interest of the Party.

The Board concluded that "the overwhelming weight of the evidence" shows that petitioner "is directed, dominated and controlled by the Communist Party * * *" (R. 208–209).

3. *Petitioner's aid and support of the Communist Party.*—As we have noted (pp. 4–5), the United Front technique is one of the main tactical approaches

utilized by the Communist Party throughout the world for extending Marxism-Leninism. The core of this technique is the necessity of the Communists to mobilize the support of many who are not Communists, and this mobilization is accomplished by raising "issues which do not involve pitting communism, but rather involves rallying them against or around another ostensible objective" (Tr. 135–139, 2674–2679; R. 85–86).

The purpose of the Party in forming petitioner was clearly expressed. In December 1938 Earl Browder emphasized at a session of the Party's National Committee that the returning veterans were to be considered a Party cadre who must be integrated into community life to make possible their maximum future contribution to the Party's cause (A.G. Ex. 11; R. 97–98). Budenz concluded, on the basis of the official Party reports made to the Party's National Committee and from other statements of Browder, that petitioner's major purpose was to be an integral part of the Party apparatus and to advance Communist influence in the United States (Tr. 2638; R. 97). More particularly, petitioner was designed to keep alive the struggle for a Communist victory in Spain as a means of influence in Latin America and at the same time providing a young, vigorous group of men to carry out Party programs (Tr. 2638–2640; R. 97). Lautner testified that petitioner constituted an organization from which the Party would draw functionaries for use at all levels and in all types of

organizations (Tr. 151; R. 97). The members of the Abraham Lincoln Brigade were told that they would become leaders in the Communist Party upon their return (see pp. 15–16 above).

The Board found that (R. 100):

> [Petitioner] was established for the purpose of affording the Party a means whereby it could continue its efforts on behalf of Communism in Spain and hence the world Communist movement, and to provide itself with a dynamic organization of tested cadres for utilization in advancing Party programs and objectives in the United States.

In actual operation, petitioner carried out the Party's original purposes. Petitioner's principal and subordinate officers mostly belonged to the Party (see pp. 23–28 above), were subject to Party instructions (see pp. 34–35 above), reported to the Party (see pp. 28–29 above), and were expelled or severely criticised if they refused to accept Party positions (see pp. 32–34 above). On the other hand, petitioner's members received jobs from, and promotions within, the Party (see pp. 29–32 above). The Board found that the promotion of petitioner's members within the Party shows that petitioner "is what the Politburo planned, namely, a Party instrumentality of dedicated, active Party members, to be used to advance the Party's programs and objectives" (R. 113). We have seen (pp. 35–39) that petitioner consistently followed Party policies over many years on numerous issues despite changes in Party positions and that changes in petitioner's policies were by direction of the Party.

Petitioner also provided other kinds of support to the Communist Party. Petitioner worked in coordina-

tion with other Communist mass organizations. Witness Romerstein was educational director of an American Youth for Democracy club to which he was assigned by the Party. Romerstein received a letter from Wolff signed as national commander of petitioner inviting Romerstein's club to participate in various activities on behalf of the Republican forces in Spain and to send delegates to a forthcoming conference on this subject (Tr. 2402–2403; A.G. Ex. 211; R. 179–180). This letter was followed by one from the National Youth Director of the Communist Party to Romerstein as his club's educational director, suggesting that the club avail itself of petitioner's speakers and that it elect a delegate to the conference referred to in Wolff's letter (Tr. 2400–2402; A.G. Ex. 210; R. 180). Romerstein testified that it is a frequent Party practice to utilize the facade of other organizations for the purpose of mailing out literature to recipients who would not be responsive to such literature if sent from the Party itself (Tr. 2425–2426; R. 180).

Witness Horvath likewise testified that it was announced at an Executive Committee meeting of the Party's Yorkville club in New York City in March 1946, that the Party was going to use, as ostensible sponsors for a peace conference to be held in Washington, D.C., its various controlled organizations including petitioner. All Party clubs and branches were to send delegates to this conference (Tr. 2294–2296; R. 180–181).

Petitioner also participated in a campaign to increase subscriptions to the *Daily Worker*. Budenz was present at a Politburo meeting in 1941 at which

Roy Hudson reported on the formation of "Browder Brigades" to increase the circulation of the *Daily Worker* and petitioner was instructed to take a leading role in this drive to set an example for other Party members. Budenz, as editor of the *Daily Worker,* was subsequently given a statement signed by "a group of veterans of the Abraham Lincoln Battalion" which was printed in the *Daily Worker* of August 8, 1941 (A.G. Ex. 237). Budenz testified that the group of veterans officially represented petitioner (Tr. 742–743, 2653–2654, 2657–2659, 2734–2747; R. 181–182). Budenz said that petitioner's aid to the *Daily Worker* was a very definite contribution to the advancement of Party programs, for this publication provides official directives to Party functionaries and followers throughout the United States (Tr. 2734–2738; R. 184).

In August 1941, at a meeting of petitioner in Chicago, Morris Childs the Illinois Party secretary, likewise directed petitioner to work toward building the Party and in particular the Party's press in honor of Earl Browder. He said that petitioner should take advantage of any national sympathy that the Soviet Union had obtained through having been attacked by Nazi Germany. Such a campaign was in fact undertaken, and witness Horan was designated as a lieutenant in the Browder Brigade where he served under a Party functionary who voted as captain of the Brigade (Tr. 1164–1165, 1234–1236, 1269, 1283, 1336–1338, 1341–1342, 1380; A.G. Ex. 100; R. 183–184).

Witness Harris testified that he attended Party meetings where it was decided that petitioner was to be utilized in Party campaigns such as writing the President and the United Nations concerning breaking relations with Franco Spain (Tr. 2085; R. 158). Harris attended meetings of petitioner in which this activity was undertaken (Tr. 2104–2106; R. 158).

Petitioner also participated in Party picket lines upon directions of the Party. For example, Lautner testified that petitioner was directed by the Party to participate in a daily picket line around Foley Square in 1949 during the Smith Act trial of Party leaders. He explained that the Party's New York State organization commission planned a daily picket line where Party controlled organizations were to picket on assigned days, and that petitioner according to this plan picketed Foley Square as directed (Tr. 142–143; R. 121). Petitioner also picketed the White House in protest against the jailing of Eugene Dennis, then general secretary of the Communist Party (A.G. Ex. 156; R. 174); marched in May Day parades (Tr. 1956–1959, 2298; A.G. Exs. 201–204; R. 161); and took part in rallies and other picket lines in support of Party policies (A.G. Ex. 97, R. 139). Witness Huber, a Party member but not a member of petitioner, took part in a picket line of petitioner pursuant to arrangements made at a Party meeting (Tr. 1972–1975, 2016; R. 123). Petitioner also provided speakers for Party functions (Tr. 1274–1279; R. 184); supported Party fund-raising affairs such as picnics, parties, and rallies (Tr. 1330, 1856–

1857, 2027, 2124; R. 184); and made Party literature available for sale in petitioner's offices (Tr. 2219–2221; R. 184).

The Board found that (R. 178):

> [Petitioner] supports, promotes, and implements the policies [of the Communist Party and world Communist movement] and thus renders material aid to the Party and the world Communist movement.

The Board concluded that (R. 209):

> [Petitioner] is primarily operated for the purpose of giving aid and support to [the Communist Party] and the world Communist movement.

SUMMARY OF ARGUMENT

I

The court below correctly sustained the Board's ultimate factual finding that petitioner is a Communist-front organization as defined in the Act.

A. Administrative agencies have considerable discretion in construing the Act they are charged with administering. *E.g., National Labor Relations Board* v. *Hearst Publications, Inc.,* 322 U.S. 111. The determinations of such agencies are entitled to even greater weight as to findings of fact. Moreover, Congress charged the courts of appeals with primary responsibility for ascertaining that the findings of the Board are sufficiently supported. See *National Labor Relations Board* v. *Pittsburgh Steamship Co.,* 340 U.S. 498. These well-established principles were specifically applied to this Act by the Court in *Com-*

munist Party v. *Subversive Activities Control Board*, 367 U.S. 1, 28–29, 69, 130–131.

The Board found, on the basis of ample evidence, that petitioner is a Communist-front organization. It presented the grounds of this finding, and the subsidiary findings on which it rests, in an exhaustive report. The court below, in discharge of its statutory obligation, determined that the Board's conclusion was supported by the evidence after a painstaking review of the entire record. In these circumstances, there is no occasion for this Court to subject the lengthy transcript to a second judicial review for the purpose of reappraising and re-evaluating the evidence. The Court need do no more than satisfy itself that the court below made a fair assessment of the record on the issue of sufficiency of the evidence. That the court below did so is evident from its opinion. Most of petitioner's contentions to the contrary are little more than quibbles which would not justify overturning the determination of the Board and court below even if they were correct.

B. The evidence shows that the Board's findings that petitioner was controlled by the Communist Party is supported by the evidence. The Abraham Lincoln Brigade was formed to fight in Spain by the American Communist Party under the direction of the Communist International and was completely under Communist control. The Communist Party formed petitioner as an organization of the returning veterans. All of petitioner's principal officers have been Party members and usually "functionaries" and

most of petitioner's subordinate officers and ordinary members are also at least Party members. The evidence showed that petitioner's officers and members were under discipline by the Party and that petitioner responded to Party orders. As a result, petitioner followed without deviation Party positions including conforming its positions immediately to changes in those of the Party.

While much of the evidence relates to events prior to the passage of the Act in 1950, the Board was entitled to consider this information as bearing on the Party's present character. *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 69. There was no evidence that the Party's relationship to petitioner changed after 1950. On the contrary, the evidence showed that petitioner's leaders remained the same as before and it continued to follow the policies of the Communist Party without deviation.

C. The evidence likewise supports the Board's finding that petitioner primarily operates for the purpose of giving aid and support to the Communist Party. Petitioner arose out of the Abraham Lincoln Brigade which had as one of its primary purposes the training of seasoned, experienced Party members to lead the Party's struggles in the United States after the war. Petitioner was organized by the Party to be a source of such Party members and to support Party policies. Petitioner has in fact been used in this manner. Petitioner's members have been promoted by

the Party to important posts. It has supported Party policies on numerous issues. And it has provided coordination with other Communist mass organizations, acted as a joint sponsor of a Party crusade, worked to increase *Daily Worker* subscriptions, and taken part in Party picket lines. Although much of the evidence relates to events before 1950, the evidence after that date supports the determination below that petitioner's policies continued as before.

D. Section 13(f) states four evidentiary factors for the Board to "take into consideration." However, the sole test is that stated in Section 3(4)—*i.e.*, control by, and support of, Communist-action organizations. *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 14, 58, 61. Consequently, it would be immaterial even if the Board misconstrued or misapplied one or more of these factors as long as it considered all the appropriate evidence.

In any event, the Board correctly construed and applied Section 13(f). There was ample evidence that Party representatives were active in the management and direction of petitioner (Section 13(f)(1)); that the Party gave support to petitioner (Section 13(f)(2)); that petitioner used its resources to promote Party objectives (Section 13(f)(3)); and that petitioner's policies did not deviate even in a single particular from those of the Party (Section 13(f)(4)). There was sufficient evidence that these factors existed both before and after 1950. The Board was not required to make findings as to the proportion of Party

and non-Party support for petitioner or how much of petitioner's resources were used for Party and non-Party objectives. While many of petitioner's policies can be explained on grounds other than Party control, the complete identity of the positions of petitioner and the Party even in phraseology is strong evidence that petitioner is controlled by the Party and operates primarily to give support to it.

II

Petitioner's major constitutional arguments are answered in the government's brief in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board,* No. 44, this Term. Petitioner's other contentions are without merit.

A. The Board's use of evidence concerning events pre-dating passage of the Act does not violate the *ex post facto* clause of due process. First, the Act, as this Court held in the *Communist Party* case (367 U.S. at 83–86), is a regulatory, not a penal, statute. Second, the Act has no retroactive effect; it applies only to organizations which at the time of the hearing were controlled by, and operated primarily to give aid and support to, Communist-action organizations. Evidence concerning events before 1950 is used only to establish the character of the organization at the time of the hearing.

B. The constitutionality of the disability imposed on Communist-front organizations and their members is premature since petitioner is now being called upon only to register. *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 77.

ARGUMENT

This is a companion case to *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board,* No. 44, this Term. In our brief in that case, we discussed at length the background of the Subversive Activities Control Act, the nature of Communist-front organizations, and various statutory and constitutional issues. We will not repeat that discussion here, but instead will refer to the appropriate pages in the earlier brief.

I

THE COURT BELOW CORRECTLY SUSTAINED THE BOARD'S ULTIMATE FACTUAL FINDING THAT PETITIONER IS A COMMUNIST-FRONT ORGANIZATION AS DEFINED IN THE ACT

Section 3(4) of the Act defines a Communist-front organization as any organization which is (1) "substantially directed, dominated, or controlled by a Communist-action organization" (the control component) and (2) "is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement" (the aid component). The Board, on the basis of a full hearing, found that petitioner was controlled by, and primarily operated to give aid and support to, a Communist-action organization, *i.e.,* the Communist Party.

Petitioner attacks this determination on the ground that the Board failed to apply the standards set forth in the Act to the evidence before it. Most of petitioner's contentions involve trivial points which, even if correct, would not require overturning the Board's order and the decision of the court below.

A. THERE IS NO OCCASION FOR A SECOND JUDICIAL REVIEW OF THE BOARD'S FACTUAL FINDING THAT PETITIONER IS A COMMUNIST-FRONT ORGANIZATION.

The evidence in this proceeding consists of more than 4,500 typewritten pages of testimony from 21 witnesses and more than 300 exhibits. Its presentation extended over more than 6 months. The exhibits consisted largely of copies of petitioner's official publications. The oral testimony covered to a large extent activities of both petitioner and the Communist Party which were participated in by, or were otherwise within the personal knowledge of, the witnesses. Thirteen of the witnesses for the Attorney General were former members of the Communist Party, of whom 6 had also been members of petitioner. On the basis of this evidence, the Board found that petitioner is a Communist-front organization as defined in the Act and, as such, required to register (R. 208–209). The Board presented the grounds of this determination in an exhaustive report (R. 1–209). The court of appeals, on the basis of a thorough review of the evidence, upheld the Board's findings (R. 215–232).

Petitioner's non-constitutional contentions fall into two categories: the construction of the statute and the adequacy of the evidence. Within broad limits,

both are within the discretion of the agency charged by Congress with the responsibility for administering the Act. Thus, it is well established that the decision of an agency concerning the construction of the statute it administers is entitled to considerable weight. *E.g., National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111. In *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, this Court held that "[s]ince the determination that an organization is or is not a Communist-action organization is largely a matter of the working out of legislative policy in multiform situations of potentially great variety, the 'construction' of the statute which ensues from its application to particular circumstances by the administrative agency charged with its enforcement is to be given weight by a reviewing court." 367 U.S. at 40–41.

We submit that the Board's findings of fact are entitled to even greater weight. *E.g., National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 597; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 271. Moreover, Section 14(a) of the Act provides that, where review of a Board order is sought:

> The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari * * *.

Relying on a similar provision in the Taft-Hartley Act, this Court in *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502, held that

"Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting and denying enforcement of Labor Board orders," and concluded (*id.* at 502–503):

> The same considerations that should lead us to leave undisturbed, by denying certiorari, decisions of Courts of Appeals involving solely a fair assessment of a record on the issue of unsubstantiality, ought to lead us to do no more than decide that there was such a fair assessment when the case is here, as this is, on other legal issues.

Accord, *National Labor Relations Board* v. *American Insurance Co.*, 343 U.S. 395, 409–410; *Federal Trade Commission* v. *Standard Oil Co.*, 355 U.S. 396, 397–404; *Peurifoy* v. *Commissioner*, 358 U.S. 59, 61. This well-established principle was expressly applied to the Subversive Activities Control Act in the *Communist Party* case (367 U.S. at 69):

> We see no reason why still another court should independently reappraise the record. We have declined to do this in the case of other agencies as to whom reviewing power on the facts has been vested in the Courts of Appeals, and we find no purpose to be served in departing now from this settled policy of appellate review.

In short, there is no occasion for this Court to repeat the scrutiny given the lengthy transcript and numerous exhibits by the Court below for the purpose of reappraising and re-evaluating the evidence and redetermining its sufficiency to support the Board's findings. This Court need do no more, as to petition-

er's non-constitutional contentions, than to satisfy itself that the court of appeals reasonably construed the statute and made a fair assessment of the record. That the court of appeals did so, we submit, is evident from its opinion. In any event, as we will now show, the Board and the court below did not err in applying the statutory definition of a Communist-front organization to the evidence in this case.

B. THE BOARD AND THE COURT BELOW PROPERLY FOUND THAT PETITIONER WAS CONTROLLED BY THE COMMUNIST PARTY WITHIN THE MEANING OF SECTION 3(4)

1. Since the Statement describes in considerable detail the evidence before the Board and the Board's findings (pp. 6–15, 20–40), we will only summarize the evidence showing that the Communist Party controlled petitioner.

The Abraham Lincoln Brigade was formed to fight in Spain in 1936 by the American Communist Party pursuant to the directions of the Comintern which controlled the world Communist movement. The Brigade was subject to Communist indoctrination, direction, and discipline through the Comintern, the Spanish Communist Party, and the American Communist Party. When the war was over, the Communist Party also controlled and supervised the return of the Brigade from Spain.

After the veterans of the Brigade had returned to the United States, petitioner was formed by the Communist Party. All petitioner's members have been veterans of the Brigade except for honorary members who have almost invariably belonged to the

Party. All of petitioner's principal officers and many of their subordinates have been Party members and usually "functionaries."[2] Much of petitioner's membership also has consisted of active Party members, including high Party officials.

The evidence showed numerous instances in which petitioner responded to specific Party orders and discipline and where petitioner's officers reported to the Party. Petitioner followed without deviation Party positions, including conforming its policies immediately to changes in those of the Party. The evidence showed that petitioner's policies were traceable to specific directions from the Party.

In short, there was overwhelming evidence that petitioner was formed by, and has been controlled not only generally but in detail by, the Communist Party.

2. Petitioner's attack on the finding of control under Section 3(4) is as follows: (1) the court below held that the control component requires evidence that the dominant leaders of the alleged Communist front were Party functionaries or representatives after the passage of the Act in 1950 (R. 222); (2) the court found that the evidence was insufficient to

[2] John Lautner, a government witness, who had been a Party official, testified that "a Party functionary is a member of the Communist Party who has a specific assignment from the Party * * [,] is a dedicated person who subjugates his own personal desires and problems, to that of the discipline of the Party * * * [, and] will go wherever the Party sends him and do whatever the Party demands of him, and completely subjugates himself to Party discipline" (Tr. 51).

show that Milton Wolff and Moe Fishman, petitioner's principal officers after 1950, were Party functionaries or representatives (R. 224); (3) the court concluded that petitioner was controlled by the Communist Party after 1950 solely on the basis of a 1952 letter from petitioner indicating that petitioner had a nine-member executive board, four of whom were shown to be Party functionaries (R. 225); and (4) this last conclusion of the court is not supported by sufficient evidence. Petitioner's contention is erroneous in at least four regards.

a. Petitioner relies on the statement of the court below that the determination whether petitioner was controlled by the Communist Party required inquiry into whether "the dominant or key" "persons active in the management, direction, or supervision" of petitioner "were authorized to do so by the Party" (R. 222). The court based this statement on Section 13(f)(1) which requires the Board to "take into consideration" "the extent to which persons who are active in [the alleged Communist front's] management, direction, or supervision * * *" are "active in the management, direction, or supervision of, or as representatives of," the Communist Party. But the court did not hold that this was the sole evidence which could be considered in determining the question of control. On the contrary, the court clearly stated (R. 226):

> [A]lthough the language of the first two criteria (one directly and the other indirectly) relate to management and control and the other

> two relate to objectives and policies, it was not intended that the four criteria be split into two separate parts, one applicable to the first half (clause A) of the statutory definition and the other applicable to the second half (clause B). The statute itself does not indicate such a dichotomy of the criteria. We think the Board must "take into consideration" all four of these specifications in determining the applicability of the whole of the statutory definition.

The court then considered all the evidence relating to control by the Communist Party and upheld the Board's finding on that issue (R. 226–229).

The court's holding was dictated by the plain language of the statute. The Act defines a Communist-front organization in Section 3(4) and provides in Section 13(f) only that certain kinds of evidence shall be taken into consideration. This Court therefore stated in the *Communist Party* case that Section 13(f) provides merely a guide for the Board in applying the test provided in Section 3(4). 367 U.S. at 14; see *id.* at 58, 61.

Thus, all the evidence must be considered in determining whether petitioner was a Communist front at the time of the hearing. The government need not show that petitioner's leaders were Party functionaries or representatives. This Court in the *Communist Party* case defined control in the analogous section relating to Communist-action organizations (Section 3(3)) as "incidents which assure that the organization will unquestioningly adhere to the line of conduct appointed for it." 367 U.S. at

40. Among these incidents, the Court suggested subjection of the leadership of the controlled organization to the personal discipline of the controlling organization and allegiance owed by the controlled organization's leaders to the controlling organization. The government was only required to meet the same standard here.

b. We have shown above (pp. 55–56) that the evidence, taken as a whole, shows petitioner's control by the Communist Party. It is important to emphasize that the Board could properly rely on evidence prior to the time the Act was passed. As we discussed in our brief in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board*, No. 44, this Term, pp. 66–67, and as this Court held in the *Communist Party* case, 367 U.S. at 69, such evidence of the past goes a long way toward establishing both petitioner's present character and that of its leaders. For, in the absence of other evidence, it is likely that an organization which, only a few years before, has been controlled by the Communist Party, is still so controlled and that an organization's leaders who were recently Party "functionaries" or members remain so.

Applying this principle here, petitioner was clearly controlled by the Communist Party before 1950. Even assuming, as petitioner says, that after that date its two principal officers, Wolff and Fishman, were not Party "functionaries," there was strong evidence from which to infer that they were at least Party members. For the evidence showed that they

were Party members as late as 1949 and 1947, respectively, and there was no indication of any change in their activities thereafter. Considerable evidence showed that after 1950 petitioner continued, as before, to support Communist causes without deviation from positions taken by the Communist Party (A.G. Exs. 108, 111, 156–157, 213–227; R. 112–178). Petitioner's Chicago office was headed in 1955 by a Party member (Tr. 1368, 1372–1373, 1400–1401; A.G. Exs. 110, 113, 116; R. 107). A letter from petitioner in 1952 indicated that it had a nine-member executive board, of whom four had been Party functionaries and two others Party members in the recent past[3] (A.G. Exs. 62, 103, 104; R. 107; see the Statement, p. 26 above). Thus, considerably more evidence than the 1952 letter alone was before the Board showing petitioner's continued connection to the Communist Party.

As the court of appeals stated, after a careful review of the evidence (R. 228–229):

> We think the Board was entitled to view these [post-1950] events in the context of, or

[3] The dissenting opinion below points to this fact that the Party connections of the members of petitioner's executive committee related to 1938 to 1949 (R. 231–232). However, it is a fair inference, in the absence of any contrary evidence, that at least some of these individuals remained "functionaries" and members of the Party. At least, this is evidence which may properly be considered along with other evidence to determine petitioner's relationship to the Party after 1950.

> through the coloration of, the past. The events in 1950–1954 were not factually isolated. The Brigade continued to operate after 1950. It had the same officers and occupied the same offices. It continued to publish its magazine. The character and tone of its declarations upon the subjects with which it dealt were the same as those it had always utilized. So that factually, on this record, the post-1950 activities and policies appear as a continued, although diminished, stream, rather than as a separate, new phase of life. Thus viewed, in the light of all that had gone before, considering the extent to which the management of the Brigade was dominated by representatives of the Party, and the extent to which it supported the Party and the Party supported it, and its policies conformed to the policies of the Party, we think the Board was justified in concluding that upon the record as a whole a preponderance of the evidence establishes that the Brigade was, in the years immediately prior to the hearing, substantially dominated, directed or controlled by representatives of the Party * * *.

Thus, considering all the evidence, the court below upheld the Board's finding (R. 109) that petitioner continued to be run by functionaries and representatives of the Party. Since, as we have seen, Section 13(f)(1) is not the ultimate test of a Communist-front organization, the Board and court were not required to make such a finding. But having done so on the

basis of ample evidence, the control component of the statutory definition was clearly satisfied."

c. Petitioner's reliance on an alleged disagreement between the Board and the court below as to whether Wolff and Fishman served as Party functionaries or representatives is erroneous. First, the court did not, in fact, disagree with the Board. While the court found that there was "no direct, specific evidence" that Wolff and Fishman were functionaries of the Party, the court suggested that their "representative capacity" could be "inferred from the fact that they made reports to the Politburo concerning the Brigade" (R. 225). The court later found that petitioner was directed by representatives of the Party (R. 229). Since, as the court said (R. 223–225), Wolff and Fishman were petitioner's principal officers, it is clear that the court accepted the Board's finding that they were representatives of the Party.

Second, even if the court had found insufficient evidence to support the Board's determination that Wolff and Fishman were Party functionaries, that would have been immaterial. The court agreed with the Board that they were Party members (R. 224). It also agreed that petitioner was controlled by the Com-

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* Petitioner contends (Br. 44) that the court below and Board differed as to whether the government was required to show that petitioner's officers were representatives of the Party. The Board, as petitioner says, did not require such proof; we have shown above (pp. 57–58) that the court also did not. In any event, both the Board and court made such a finding (R. 105–106, 109, 229) so any difference on statutory interpretation is irrelevant.

munist Party. As this Court held in the *Communist Party* case (367 U.S. at 67), the reviewing court need not agree with every subsidiary finding of the Board. See the government's brief in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board,* No. 44, this Term, p. 89.

Third, any ruling by the court below that the Board's finding that Wolff and Fishman were functionaries was not supported by sufficient evidence would have been erroneous. Wolff had been a long-time Party member and, in 1949, had been assigned by the Party to the Civil Rights Congress as a national organizer (Tr. 143–144, 151–152, 1952, 2509, 2703, 2753–2754, 4125). Wolff became national commander in 1939 at petitioner's first national convention, a convention which was held after consultation with the Party's national committee (Tr. 2758–2760; R. 100–101) and which was planned, organized, and conducted by individuals who were, without exception, Party members and in many cases Party functionaries (see the Statement, pp. 23–24 above; R. 100–101). The Brigade's constitution, adopted at this convention, had the prior approval of the Party's national committee (Tr. 2679–2680; R. 96). Subsequent to his election, Wolff reported to the Party's national committee concerning petitioner (Tr. 2642, 2753; R. 110). It could reasonably be inferred from this evidence that Wolff became and served as national commander of petitioner at the behest of the Party. This inference is strengthened by Wolff's continual activity in support of Party programs (*e.g.,* Tr. 1316–1317,

1358–1359, 2387–2407; A.G. Exs. 95, 96, 98, 144; R. 139–140, 141, 150–151, 164, 165, 166, 178, 179–180.)

The evidence as to Fishman is not as complete. There is, however, evidence of his Party membership during the periods from 1940 to 1941 and 1947 (Tr. 1944–1945, 2002–2007) and possibly 1946 (Tr. 2087–2089). He was selected by Wolff, a Party member, as an executive officer of an organization whose formation and staffing by the Party has already been described (see the Statement, pp. 20–25 above; R. 95–109). As in Wolff's case, Fishman has also been active in support of Party programs (Tr. 1389, 2483–2493; A.G. Exs. 108, 218, 219, 221, 223; R. 162, 173–178). In short, there was sufficient evidence for the Board to find that Wolff and Fishman were Party representatives when acting as officers of petitioner.

d. Finally, petitioner's attack on the reliance of the court below on "a single letter" (Br. 15) is misplaced. As noted, the Board's finding that the Communist Party controls petitioner rests on far more than this particular letter. Indeed, the letter was cited by the court only to show that after 1950 petitioner had an executive committee which, other evidence showed, was composed largely of Communist functionaries or members.

The letter cited by the court was signed by Wolff and Fishman as the national commander and executive secretary, respectively, of petitioner (A. G. Ex. 103). The court inferred that the nine signatures which followed were of petitioner's executive commit-

tee (R. 223, 225–226). This conclusion is supported by a subsequent letter which was similarly signed (A.G. Ex. 104) and by a bank record listing some of the same persons as signatories on petitioner's checking account in their capacity as officers and members of the executive committee (A.G. Ex. 62). Moreover, in its answer filed with the Board on November 16, 1953, in response to the petition of the Attorney General, petitioner stated:

> The management, direction and supervision of the Respondent has always been under the exclusive control of the elected officers of the organization pursuant to the constitution and by-laws adopted by the members of the organization. Further answering such allegations, Respondent states that it sets its own policies and makes its own decisions; that it is self-governed, and its governing body is as set forth in Article X of its constitution which provides:
>
> "(1) The final authority of this organization shall rest always in the hands of the membership and shall be expressed at a delegated Convention once every year. The National Executive Committee shall call such Convention.
>
> "(2) Between Conventions, authority shall be vested in the National Executive Committee."

The Board and the court were fully justified in finding that the 1952 letter contained the names of petitioner's executive committee which had an important part in running petitioner.

C. THE BOARD AND THE COURT BELOW PROPERLY FOUND THAT PETITIONER OPERATED PRIMARILY TO GIVE AID AND SUPPORT TO THE COMMUNIST PARTY WITHIN THE MEANING OF SECTION 3(4)

1. We have described in some detail, petitioner's aid and support of the Communist Party in the Statement above, pp. 40–46. In summary, the Abraham Lincoln Brigade was formed to fight on the Republican side in the Spanish Civil War by the American Communist Party under the directives of the Communist International. This military aid was important to the world Communist movement since the Republican cause offered an opportunity for a Communist Party to participate in the government of a western European country which could lead to greater Communist influence and perhaps dominance in Spain and, through it, in Latin America (R. 89–90). Military victory would curb fascism and thereby help to protect the Soviet Union (R. 89). In addition, the American Communist Party considered the Brigade of importance to it because service in Spain would provide seasoned, experienced Party members who could lead the Party's struggle to establish a Communist dictatorship in the United States.

Petitioner was formed by the Communist Party as a means of organizing the veterans of the Brigade upon their return from Spain. It was hoped that petitioner would thereby provide a reservoir of personnel for the Party. As the Party's national chairman, Earl Browder, told the Party's National Committee in December 1938 (A.G. Ex. 11 (p. 23); R. 97–98):

> I must say a word of emphasis on the question of the veterans of the Lincoln Brigade, especially those who are coming back soon. * * * We must in an organized way, very patiently and systematically, help establish the guarantees everywhere, that each one in his own community, in his own state, is absorbed back into the everyday life of our people so that the great contributions they have to make to us will become possible. They are not coming back with these great contributions all tied up in a bundle in their pockets ready to pull out and show you; only in after years will you be able to measure the tremendous addition to our forces that these boys are going to be. * * *

Petitioner did in fact serve the announced Party purpose of acting as a reservoir of trained Party members, for petitioner's members were highly regarded within the Party and were given special consideration in promotion in it throughout petitioners existence.

Petitioner has also served the Party by supporting its positions without deviation. This support has frequently been not only in substance but often in phraseology. Petitioner has immediately conformed its policies to reversals in those of the Communist Party. Finally, petitioner has worked in coordination with other Communist mass organizations, acted as a joint sponsor of a Party crusade, worked to increase *Daily Worker* subscriptions, and taken part in Party picket lines, parades, fund-raising events, and other Party functions.

We submit that this evidence is plainly sufficient to support the Board's finding that petitioner operated primarily to give aid and support to the Communist Party (R. 209).

2. Petitioner claims (Br. 18–21) that the evidence concerning events after 1950 does not support the Board's finding concerning petitioner's objectives at the time of the hearing. We have seen above (p. 59) that the Board and court below properly placed considerable reliance upon the evidence before 1950 to show the character of petitioner's activities at that time. If, as is clear, petitioner operated before 1950 primarily to give aid and support to the Communist Party, all that the evidence concerning events after 1950 need show is that petitioner's character did not substantially change.

As shown, petitioner continued after 1950 to be controlled by the Communist Party. Moreover, it continued to support, without deviation, Party policies. For example, as the court below noted (R. 226–229), petitioner attacked "Wall Street imperialists," "war mongers," and American foreign policy toward Franco Spain, demanded cessation of the Korean War, and supported its members indicted under the Smith Act (*e.g.*, A.G. Exs. 109–115, 213–215, 220; R. 173–178). While petitioner, of course, had the right to do all these things, they demonstrated that the Communist Party's control of petitioner continued to be used so that petitioner operated primarily to give aid and support to the Party.

D. THE EVIDENCE AMPLY SUPPORTS THE BOARD'S SUBSIDIARY FINDINGS UNDER SECTION 13(f)

In reaching its ultimate conclusion as to whether an organization is a Communist front, the Board is required by Section 13(f) to "take into consideration" four evidentiary factors:

> (1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and
>
> (2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and
>
> (3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist action organization, Communist foreign government, or the world Communist movement referred to in section 2; and
>
> (4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.

Petitioner attacks the Board's findings under all these subsections. We submit that the arguments are

erroneous. But, in addition we emphasize, as is noted above (pp. 57–58), that Section 13(f) merely provides that certain evidence must be considered by the Board; the sole tests are those stated in the definition of a Communist front in Section 3(4). Consequently, as long as the Board considered all the relevant evidence, it would be immaterial if it misconstrued or misapplied one of the evidentiary criteria. It is sufficient, as we have seen (pp. 55–58), that the Board correctly concluded, on the basis of all the evidence, that petitioner was controlled by, and operated primarily to give aid and support to, the Communist Party.

1. Petitioner first claims (Br. 22–24) that the Board misapplied Section 13(f)(1), which directs the Board to consider "the extent to which persons who are active in [an organization's] management, direction or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representative of, any Communist-action organization * * *." As noted (pp. 55–56, 59–62), the Board and court below found that petitioner was run by representatives of the Communist Party and those determinations are supported by evidence concerning events both before and after the passage of the Act.

a. Petitioner states (Br. 22–23) that the Board confused mere membership in the Party with acting as a Party functionary or representative. The record, however, shows no such error. While the Board's report does on several occasions say that groups of peo-

ple were "functionaries or members," this does not mean that the Board was equating the two. Instead, the Board was referring to a list of people, some of whom had been shown to be functionaries and some to be members only (e.g., R. 108–109, footnote). The Board, where necessary, specifically referred to individuals as functionaries or representatives (see R. 95, 99, 101, 102, 103–104, 105–106, 107). While the Board did not define "representative" or "functionary," the former term unambiguously means one who acts for the Party and the latter was specifically defined at the hearing by a government witness, John Lautner, a former Party official, as "a member of the Communist Party who has a specific assignment" (Tr. 51). He went on to explain that a full-time functionary "is a dedicated person who subjugates his own personal desires and problems, to that of the discipline of the Party," one who "will go wherever the Party sends him and do whatever the Party demands of him" (Tr. 51). It is clear that this definition was accepted by petitioner as well as by the Board, since petitioner objected to the identification of particular individuals as functionaries in 18 exceptions to the recommended decision, but made no objection to the use of that term.

It is true that the Board does discuss, in this section of its findings, some individuals identified only as Party members (R. 101, 106). But the Board, in dealing with the formation and organization of petitioner, was entitled to consider the consistent

presence of Party members on its various committees and in many of its offices. Clearly, the presence of Party members in these positions is relevant to the Board's ultimate determination, since there was evidence, and the Board found, that petitioner was created by the Party as a reservoir of trained Party members (R. 97–99) and that petitioner was subject to Party discipline (R. 121). It may well be that the presence of mere Party members in important positions within petitioner would not itself be sufficient to support a finding under Section 13(f)(1), but the Board could properly consider this evidence as relevant to the ultimate issues before it.

b. Petitioner also attacks (Br. 23–24) the first evidentiary guide on the ground that the Board did not find that the individuals discussed were simultaneously active in both the Party and petitioner. Petitioner's argument seems to be, that, since the Board did not specifically state each time it discussed an individual's activity in petitioner and the Party that such activity was concurrent, the Board ignored the question. But the Report is replete with examples demonstrating not only that the Board was aware of the need for the activity to be simultaneous but also that it found contemporaneity (R. 81, 93, 95, 101, 102, 106–112, 114, 116–117, 150–159, 163). For example, the Board found that petitioner's executive secretaries since its inception were concurrently Party members or functionaries (R. 106); stated that petitioner's first national commander was then a Party functionary (R. 95, 100); and noted that Lautner testified con-

cerning the continued Party activity up to at least 1950 by several of petitioner's leaders—including Milton Wolff, petitioner's national commander, and Irving Goff, Edward Robinson and Felix Kuzman, each of whom had been petitioner's executive secretary and/or a member of its National Board (R. 105–108, 115–117). In contrast petitioner points to no instance which indicates that the Board ignored the time element and makes no showing that the evidence supports its contention. Thus, petitioner is asking the Court to presume that the Board ignored an obvious and important factor in considering the first evidentiary point.

2. Section 13(f)(2) directs the Board to consider "the extent to which its support, financial or otherwise, is derived from any Communist-action organization * * *." After summarizing the evidence (R. 122–131), the Board found that the aid given by the Party in the formation of the petitioner was "material and substantial" and that the continuous aid thereafter given by the Party was of the same character (R. 122). And as one of its ultimate findings, the Board held that the "Party has continuously, in the many ways shown in this Report, aided and supported [petitioner] and thus assured itself of its continued usefulness" (R. 207).

a. Petitioner attacks (Br. 24–27) this finding of Party support primarily on the ground that in considering "the extent to which" the petitioner was supported by a Communist-action organization or the world Communist movement, the Board did not make a finding as to the exact propor-

tion of petitioner's support which came from the Party.

We first note that Congress did not provide that the Board shall measure the extent of Party support on a precise scale. As we have seen (p. 58), the evidentiary considerations of Section 13(f) do not provide a formula—they are factors which must be considered in reaching an ultimate finding.

Second, it is not even clear that, as petitioner suggests, a high percentage of non-Communist support shows that an organization is not a front. As part of its findings prefacing the Act, Congress stated in Section 2(7) that one of the purposes of Communist-front organizations was "to obtain financial and other support from persons who would not extend such support if they knew the true purpose of, and the actual nature of the control and influence exerted upon, such 'Communist fronts.'" As the aid received from non-Communist sources becomes more extensive, the support given by the Party would compose a smaller and smaller percentage of the front's support. If petitioner's view were followed, the more successful the front organization, the less it would satisfy the statutory definition. Instead, we submit that substantial Communist support for an organization—particularly, as in this case, in its founding and organization—constitutes strong evidence that the organization is a Communist front even if, as a matter of mathematics, most of its support comes from non-Communist sources.

b. Petitioner also objects (Br. 25–26) to the Board's reliance on particular evidence as showing Party support of petitioner. For example, it states that a $500 contribution given by the Communist Party could not support the conclusion that petitioner was controlled by the Party and operates primarily in the Party's interest. No one item of circumstantial evidence standing alone can be conclusive and the Board did not so treat any item. But the joining of many strands gives strong support for the conclusion.

c. Finally, petitioner says (Br. 26–27) that there was insufficient evidence of Party support after the Act was passed in 1950. However, as we have noted above (p. 59), the clear showing of petitioner's activities existing for a long period of time prior to 1950 goes a long way toward establishing the continuance of these activities for the few years thereafter until the time of the hearing. The Board had before it several examples of Party support for petitioner in the Party's official publications after 1950 (A.G. Exs. 150–167, 172; R. 125, 128–129). Petitioner states that such newspaper publicity does not constitute support under Section 13(f)(2) because it was not shown to have been solicited or accepted and an organization cannot be condemned for the conduct of others. Section 13(f)(2) contains no such limitations; it covers any support, "financial or otherwise." It was surely rational for the Board to *consider* the extent to which the Party is supporting petitioner, whatever form this support takes. For it is a reasonable inference

that the Party will not give substantial support to an organization which is not subject to Party control and does not operate to benefit the Party.

3. Petitioner challenges (Br. 27–32) the Board's finding under Section 13(f)(3) concerning "the extent to which [petitioner's] funds, resources, or personnel are used to further or promote the objectives of any Communist action organization * * *." Petitioners worked in coordination with other Party war organizations, was a joint sponsor of a Party crusade, supported a drive to increase subscriptions to the *Daily Worker*, and participated in Party picket lines, rallies, and other activities. However, petitioner's principal use of resources to further the objectives of the Communist Party involved support for Party positions. The Board found that "the United Front" technique was one of the main tactical approaches utilized by the Communist Party throughout the world for extending Marxism-Leninism and that at the core of this technique was the mobilization of non-Communist support (R. 83–87). This mobilization is accomplished by raising "issues which do not involve pitting communism against something else and attempting to rally masses in support of communism, but rather, involves rallying them against or around another ostensible objective" (R. 85–86). The Board then stated (R. 86):

> The real objective is always to get the maximum number of supporters that can be moved along the path of the Communist line for any particular period. "Anti-fascism" and "Span-

> ish fascism" were used pursuant to this strategy and tactic as a means of including hundreds of thousands of supporters to follow the Communist line for Communist purposes, leading ultimately to Communist domination.

In its ultimate conclusions, the Board summarized its findings concerning the purposes underlying the creation and maintenance of petitioner (R. 206):

> The [Communist Party], as a vehicle for carrying on the Communist strategy with respect to Spain, formed the respondent organization in 1938 prior to the return of most veterans. The Party purpose was to use respondent and the shibboleth of anti-fascism as a facade, an instrument to advance Communist influence in the United States and to aid the world Communist movement with reference to Spain.

a. Petitioner contends (Br. 27–28) that the Board failed to contrast the use of petitioner's resources for Communist and non-Communist purposes. As to propaganda, the Board concluded that petitioner's positions never deviated from those of the Party (R. 131, 178). Thus, all its resources in this area were for Communist purposes. Petitioner, however, says the Board should have considered how much of petitioner's resources were used for rehabilitation of veterans of the Spanish Civil War. But such rehabilitation also helped Party objectives. For the evidence showed, and the Board found, that many of petitioner's members were also members of the Party, and a major purpose of petitioner was to serve as a source for recruits into the Party (Tr. 141–142, 2638–2640,

2774–2775; R. 96–97). Since the rehabilitation of veterans directly served the Party by helping actual or potential Party members, the Board could have considered it as another use of petitioner's resources to serve Party objectives. The fact that the Board did not do so is, if anything, unduly favorable to petitioner.

In any event, petitioner has made the same error as it made concerning the second factor discussed above (pp. 73–74). The Board need not make any mathematical computation concerning the proportion of petitioner's support of purely Party objectives as contrasted to its seeming support of other objectives. The statute merely directs the Board to consider the substantiality of an alleged Communist front's use of resources to support a Communist-action organization. If this use was substantial, it would tend to show that petitioner was a Communist front even if much of its efforts went to seemingly non-Communist objectives. A Communist front might well attempt to gain prestige useful for its work on behalf of the Communist Party and to conceal its Communist connections by supporting activities having no direct Communist objectives. Here, petitioner did not do even this; petitioner's rehabilitation work was on its face related to supporting the Communist Party.

b. Petitioner claims (Br. 28–29) that the Board did not consider whether there was evidence of events occurring after the passage of the Act in 1950 showing petitioner's use of its resources to support the Communist Party. In fact, however, the Board pointed to several instances where petitioner contin-

ued to support Communist positions after 1950 without deviation (see p. 68 above). Such evidence was sufficient to show that petitioner's use of its resources before 1950 to support Party objectives continued thereafter.

c. Petitioner contends (Br. 30) that Section 13(f)(3) allows the Board to consider only evidence that an alleged Communist front is using its resources to support the objective of forcible overthrow of the government. It says that the Board may not consider whether the alleged front is serving more immediate Communist objectives. This contention, as we show at length in our brief in the *American Committee* case (pp. 71–82), is plainly contrary to the intent of Congress. For, if the Act requires a showing that a Communist front directly supports forcible overthrow, it would have no practical application. Communist fronts by nature are secret organizations dedicated to helping Communism's ultimate goals by pursuing seemingly harmless immediate objectives.

d. Petitioner argues (Br. 30–31) that the Board erroneously considered evidence that petitioner's policies did not deviate from those of the Communist Party—which directly relates to the evidentiary factor in Section 13(f)(4) (see pp. 82–88 below)—as showing petitioner's use of its resources to support the Communist Party under Section 13(f)(3). As we have seen (pp. 40–42), the Board found that petitioner was formed to use the standard Communist Party technique of gathering support for the Communist line through

other popular issues. Petitioner, the Board found, followed this technique, since the experiences of its members in Spain gave it an attractive "public image" to oppose fascism (R. 100, 207). Against this background, petitioner's promotion of the Party line constituted evidence of its use of its resources to support Party objectives and the Board was justified in so holding. Thus, the Board found that advancement of Party policies, and not mere non-deviation, constituted support of the Party.

It is true that the Board relied on much of the same evidence under Section 13(f) (3) and (4). But there is no logical or other reason why certain evidence may not be relevant under more than one of the evidentiary considerations. While petitioner says that the *Communist Party* case holds that non-deviation relates only to the control and not the objectives component, this is erroneous. Both the court of appeals and this Court in the *Communist Party* case stated that non-deviation tended to show control in determining whether the evidence of control was sufficient (223 F. 2d 531, 561; 367 U.S. 1, 61); neither court said that this evidence could not also constitute evidence of an organization's using its resources to support Communist objectives.

Petitioner says that the Board cannot consider non-deviation under Section 13(f)(3) because the First Amendment allows consideration of an organization's views only insofar as they show outside domination and prohibits basing a registration order on non-deviation alone. We submit that there is no constitutional

reason why an organization's views cannot be considered for any evidentiary purpose whatever. While we assume *arguendo* that an order to register cannot be based on such evidence alone, that is not the case here. The non-deviation of petitioner's policies from those of the Party constitutes only one part of the ample evidence of petitioner's control by, and support of, the Communist Party.

e. Petitioner objects (Br. 32) to the Board's finding that petitioner's payment of salaries to its own officers constituted aid to the Party (R. 186). However, this finding was limited to payments made to officers who were Party representatives. Surely, payment of salaries to such persons constituted aid to the Party, particularly when the evidence also showed that much of petitioner's and therefore, by inference, its officers' work was to support Party policies.

f. Finally, petitioner contends (Br. 32) that the court below introduced a new requirement in Section 13(f)(3) which was not relied on by the Board. The court stated that many persons support positions which are also the objectives of the Communist Party. Therefore, the court said, the crucial question is: "When a person, or an organization, actively presses objectives which are objectives of the Communist Party, does he or it do so as a matter of independent conviction, or does he do so by reason of substantial direction or control by the Communist Party and for the purpose of giving aid to the Party?" (R. 228). The court then stated that, upon the record as a whole, the Board was justified in concluding that petitioner

is "substantially dominated, directed or controlled by representatives of the Party, and operated primarily to aid and support the Party" (R. 229).

The court below did not apply a standard different from the Board. Instead, the court merely paraphrased the whole of the statutory definition of a Communist front in Section 3(4) and applied it to an organization, such as petitioner, which has as one of its major activities the dissemination of propaganda. For Section 3(4) requires a finding that petitioner be controlled by, and operate primarily to give aid and support to, a Communist-action organization. The Board answered the court's question—just as the court answered the question itself—by its ultimate finding that petitioner is controlled by the Party and operated primarily for the purpose of giving aid and support to the Party (R. 208–209).

4. The fourth consideration stated in Section 13(f) is the "extent to which the positions taken or advanced by [the alleged front] * * * deviate from those of any Communist-action organization * * *." The Board found that petitioner "consistently takes and advances positions on matters of policy which do not deviate from those of the Communist Party * * *" (R. 178).

a. Petitioner first renews its claim (Br. 33) that the Board relied on events occurring before 1950. However, as noted (p. 59), the Board could properly consider petitioner's activities before that date and thus determine, from evidence of later events, whether petitioner's earlier activities continued. Here, the Board properly found, on the basis of overwhelming

evidence, that petitioner's views did not deviate from those of the Party before 1950 (see the Statement, pp. 35–39 above) and there was specific evidence that this identity of positions continued (see p. 68 above).

b. The Board discussed numerous instances in which petitioner's and the Party's positions were identical (R. 131–178). Petitioner does not deny this identity as to most of the examples cited by the Board. Thus, even if petitioner's explanation of some of these examples is accepted, it would not disprove the Board's finding.

Petitioner first suggests (Br. 33) that the Board ignored the fact that, in several instances, the policies shared by petitioner and the Communist Party were also espoused by other groups or individuals. But this argument mistakes the meaning and purpose of the non-deviation factor. It is immaterial whether or not the Communist-action organization and the alleged Communist front were the only ones holding certain views or whether or not the views were popular. The critical inquiry is whether over many years an organization mirrors in each of its policies the policies of a Communist-action organization. The fact that, as to certain policies, others have shared the same views was properly given little weight in light of the fact that the Board could find no instances of deviation over a fifteen-year period. Indeed, this Court in the *Communist Party* case—in considering the meaning of the analogous evidentiary consideration relating to Communist-action organizations (Section 13(e)(2))—stated that the coincidence of policies of

a Communist-action organization with those of non-Communist groups was so irrelevant that the Board had discretion to deny cross-examination on this issue. 367 U.S. at 64–66.

Petitioner objects (Br. 38) to the Board's reliance on petitioner's opposition to the Internal Security Act. It states that it had no choice except to oppose the Act since, in view of the fact that it had already been designated a Communist front by the Attorney General and the House Un-American Activities Committee, the legislation was plainly directed against petitioner. Assuming that this is a reasonable explanation, it is irrelevant that there is a possible justification for petitioner's policy other than blind obedience to the Party line. As stated above, the question is the extent to which the numerous positions taken by petitioner did not deviate, not whether or not each position can otherwise be defended.

Petitioner says (Br. 34) that the Board improperly considered the similarity of petitioner's and the Party's view that events in Spain would influence events in Latin America, since this was a question as to which no difference of opinion was possible. If petitioner's interpretation of the Board's finding were correct, this argument would have merit (although it would hardly constitute reversible error). But the Board's finding was not based merely on the recognition by petitioner and the Party that events in Spain foreshadow events in Latin America. The Board stated that petitioner "from its inception to the present has adopted policies which coincided with

those of the Party in all their varied aspects concerning Spain, including Latin America as part of its sphere of influence * * *." This statement means not that petitioner and the Party agreed that Latin America was within Spain's sphere of influence, but that petitioner and the Party agreed on policies toward both Spain and Latin America. The Board then went on to document this finding by citing the identity of policies in both these areas (R. 152–163). For example, the Board found non-deviation concerning the Vargas government of Brazil (R. 153), the "junta" movement in Spain (R. 155), the release of two "anti-fascist" Spanish military leaders, Santiago Alvarez and Sebastian Zapirin (R. 159), and charges that Spain was using refugee Nazi scientists in atomic research (R. 160). The Board also noted that the methods used by both the Party and petitioner to gain support for the various phases of their Spanish policy were similar (R. 153, 155–157), and that petitioner functioned in close coordination with the Party in promulgating that policy (R. 157, 158, 161).

Petitioner argues (Br. 34–35) that the Party and petitioner differed concerning Greece, the Truman Doctrine, and the Marshall plan. But the alleged differences involve merely phraseology—for example, that petitioner did not use "dying capitalism," "imperialism," etc. as a Party spokesman had (Tr. 1871–1872; A.G. Ex. 50; R. 169). But such complete identity of approach and phraseology, though very often present, as the Board pointed out (*e.g.*, Tr. 136,

144, 160, 163–164; R. 167, 172), is not necessary under this subsection. Moreover, petitioner's position in this area was in fact very close even in phraseology to that of the Party, since petitioner vigorously attacked the Greek government as fascist and President Truman's policies in this area as imperialist (cf. A.G. Ex. 47 with A.G. Ex. 146 (p. 1); R. 167–168).

Petitioner challenges (Br. 35–37) the Board's finding of non-deviation concerning the Hitler-Stalin Pact. The record amply demonstrates that prior to the Hitler-Stalin Pact of August 23, 1939, both the Communist Party and petitioner were strongly "anti-fascist" (*i.e.*, pro-Soviet) and anti-Hitler (Tr. 125–126, 322–324, 874–875; A.G. Ex. 8; R. 132–133). However, by September 19, 1939, shortly after the German invasion of Poland and the outbreak of the war on September 1, the policy of the Party concerning "fascism" and Hitler had reversed itself—the war was an "unjust" war between "imperialist" nations of no concern to Communism (Tr. 388–390, 870, 880; A.G. Ex. 36; R. 132–141). Petitioner agreed that it was an "imperialist war" between imperialists on both sides and advocated neutrality (Tr. 545–546, 883–887, 2445–2446; A.G. Ex. 59; R. 135–136). Witness Herrick described the change in this manner (Tr. 545–546):

> After Soviet Russia and Hitler's Germany signed the Stalin-Hitler pact, the line of the Party changed overnight from "Collective security against Fascism" to one of "Hands off Fascism" more or less to one where the fight

> and all the slogans and all the propaganda was against Britain as a bourgeois imperialist government, against the American Government for being as they called President Roosevelt at that time, a warmonger. * * * When the Communist Party changed its line from one of "Collective Security Against Fascism," the Veterans of the Abraham Lincoln Brigade changed its line from "War against Fascism" to "It was an imperialist war and Britain and France and the United States were imperialist powers" and to one of so-called neutrality in this struggle.

Following the attack on the Soviet Union by Germany on June 22, 1941, both the Communist Party and petitioner again changed their policy. For both, the war was no longer "unjust" and "imperialist" but suddenly became "just," and they supported the allies in their fight against Hitler (Tr. 1322–1323, 2456–2457; R. 140–147; see the Statement, pp. 36–39 above).

It is true that petitioner's national commander, Milton Wolff, testified that petitioner did not change its position with respect to Germany during the Hitler-Stalin Pact (Tr. 3607–3608, 4159). But this testimony is at variance not only with documentary evidence but the testimony of members of petitioner including Herrick (Tr. 545–546; R. 136), Maken (Tr. 879–887; R. 136), Gladnick (Tr. 1540–1542; R. 136), Hamburger (Tr. 2447–2448; R. 138), and "quite a number of Veterans" (Tr. 1544) considered petitioner to have reversed its earlier position. Having considered the whole record, the Board was justified in

concluding that this overwhelming evidence should be credited (R. 146). It was surely within the authority of the Board to decide between conflicting evidence.[5]

E. THE BOARD DID NOT RELY ON IMPROPER EVIDENCE

Petitioner contends that the Board erroneously relied on evidence concerning the activities of petitioner's members which were not shown to be on behalf of petitioner (Br. 38–40) and upon hearsay testimony (Br. 40–41). Neither contention has merit.

1. The Board's use of evidence concerning petitioner's members was entirely reasonable. For example, it properly considered the promotion of petitioner's members within the Communist Party in the light of its prior finding that the Party's National Committee favored petitioner as a Party instrumentality composed largely of dedicated, active Party members (Tr. 141–142, 151, 2638–2640, 2774–2775; R. 112–113). The Board's conclusion, based on this and much other evidence, was that petitioner "maintains a rapport with the Party, primarily involving activities of its officers and a substantial segment of its membership who are Party members, which places [petitioner] in a knowledgeable position of subservience to Party control and Party purposes" (R. 113).[6]

[5] Petitioner says (Br. 36, note 32) that the Board's conclusions are contrary to the chronology of history, since the Board assumed that war had broken out between Germany, on one side, and France and Britain, on the other, prior to the Hitler-Stalin Pact of August 23, 1939. The Board, however, made no such statement or suggestion.

[6] In contrast to the large number of petitioner's members identified as Party members by the government's witnesses, petitioner's evidence identified only one of petitioner's members is not belonging to the Party (Tr. 3066).

Petitioner complains (Br. 39–40) that the recognition given by the Party to petitioner's members stemmed from the activities of these individuals in Spain, not from the fact that they were members of petitioner. But this is precisely the point the Board was making. The Board found that the Party respected membership in petitioner because it signified that an individual had proven himself and his Party dedication by going to Spain (Tr. 151, 365, 1226, 1236, 1269, 1352, 1483–1484; R. 113–121). Conversely the fact that petitioner's members were promoted in the Party facilitated Party control of petitioner and contributed to co-ordination between the organizations.

Petitioner also complains (Br. 39) that Lautner, who testified as to the Party promotions of a number of individuals, could not specifically state that each was a member of petitioner. But petitioner points to no one discussed by the Board as an example of such promotion who was not sufficiently identified as a member either by Lautner in many instances (Tr. 359–367) or by other evidence (see, *e.g.*, the Statement, pp. 26, 30).

Petitioner also claims (Br. 40–42) that "the Board persistently attributed to petitioner the Party activities of its members despite the absence of any showing of petitioner's authorization or responsibility for their activities." But all of the examples it cited show that the Board reasonably considered the evidence before it. For example, the Board observed that the activity of petitioner's members in the Party was relevant to "rapport" with the Party (R. 110).

The Board stated that, in determining petitioner's "lack of deviation [and] its implementation of Party policies," it considered the presence of Party personnel as members and officers of petitioner and their activities in the Party (R. 166–167). The Board said that their involvement with the Party suggested that these officers and members were bound to accept and support Party policies (R. 109, 167). The Board merely used the statement of a Party organizer at a Party club as cumulative evidence of the fact that the Party benefited from promotion of the *Daily Worker* (R. 184). Likewise, the Board reasonably considered the activities of Party members and representatives who were also officers and members of petitioner as evidence of Party control of petitioner (R. 109, footnote, R. 198–199). And the Board properly found, on the basis of sufficient evidence, that the members of petitioner who called for expanding the circulation of the *Daily Worker* were acting for petitioner (see Tr. 1336–1342, 2653–2659, 2742–2743; R. 181–184).

Finally, petitioner contends (Br. 42) that the Board relied on the employment of government witnesses as couriers by the Soviet Union or the Party (R. 184–186) without showing any connection between these persons and petitioner. However, witness Harris was instructed to report to both petitioner and the Party before each trip he took (Tr. 2076–2081). His experience and that of witness Hecht shows "that members of [petitioner] have been considered trustworthy by international Soviet

agents" and that petitioner's members have "functioned as international couriers for the Party and the world Communist movement" (R. 184–185). Both items were properly considered by the Board as part of the evidence before it.

2. Petitioner's attack upon the Board's use of hearsay is contrary to well-established law. As we showed in our brief in the *American Committee* case (p. 87), administrative agencies may consider hearsay to support other, more direct evidence. The Board here accurately stated that the hearsay "evidence has been given its due weight and suffice it to say that in no instance does mere uncorroborated hearsay constitute the sole support for any major finding or conclusion reached" (R. 89).

With a single exception, petitioner points to no instance of a finding based on hearsay alone. The Board's findings concerning petitioner's formation are also supported by direct evidence (*e.g.*, Tr. 141–142, 2618, 2625–2629, 2641–2660, 2674; R. 95–98). The *Worker* was identified as the official organ of the Communist Party (Tr. 50, 178, 2605–2606; R. 82); Louis Budenz, who had been managing editor of the *Daily Worker*, testified that all the policies of the *Daily Worker* were those of the Communist Party (Tr. 2648–2649) and that its statements constituted directives to Party members (Tr. 2735; A.G. Exs. 132, 133). Thus, the Board could properly consider *Worker* articles in two respects—as evidence of Party support of petitioner and of Party policy. As evidence of Party support, the significance of the articles

was merely their presence in the Party's official organ and did not depend on the truth of the matter in them. It was therefore not hearsay. And, as to the Board's second use of this evidence, petitioner itself recognizes that the Party's official organ is proper evidence of the Party's views (Br. 45).

Petitioner cites one instance, which it terms a "chief instance" (Br. 42), where the Board apparently relied solely upon an article in the *Daily Worker* to establish the fact that petitioner paid a tribute to Stalin (A.G. Ex. 172; R. 190). Assuming that this was error, the Board did not rely to any extent on this evidence and striking it would have no effect on the Board's findings or ultimate conclusions. In short, as this Court held in considering a far more important finding in the *Communist Party* case (367 U.S. at 67), such an erroneous finding would not warrant reversal. See also pp. 93–94 below.

F. THE DECISION BELOW SHOULD NOT BE REVERSED ON THE GROUND THAT THE BOARD AND COURT BELOW PLACED DIFFERENT RELIANCE ON SOME OF THE EVIDENCE

Petitioner also claims (Br. 43–45) that the decision below must be reversed because the Board and court placed differing reliance on certain evidence.[7] It points to differing weight given to pre-1950 and post-1950 evidence and particularly to the 1952 letter, which the court said disclosed petitioner's executive committee. Even if we assume that the Board and

[7] Petitioner's contention (Br. 44) that the Board and court below placed different constructions on the Act are discussed above at pp. 62, note 4, 81–82.

the court below differed somewhat in their treatment of the huge record before them, it need hardly be emphasized that such minor differences between an administrative agency and a reviewing court are not grounds for reversal by this Court. Otherwise, administrative determinations would rarely survive judicial review.

The proper rule was stated by this Court in the *Communist Party* case. There, this Court held that the Board's order need not be reversed even though one of its subsidiary findings was found by the court of appeals to be unsupported by the evidence (367 U.S. at 67):

> Remand would be called for only if there were a solid reason to believe that without that subsidiary finding the agency would not have arrived at the conclusion at which it did arrive.

It follows *a fortiori* that differing weight given to a small proportion of the evidence does not justify reversal.

The Court's holding in the *Communist Party* case is fully supported by prior decisions. It is well established that where it appears that an administrative order would have been the same if a finding had been omitted, error concerning the finding does not justify overturning the order. *National Labor Relations Board* v. *Newport News Co.*, 308 U.S. 241, 247; *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 139 (C.A. 1), certiorari denied, 346 U.S. 887; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 169 F. 2d 881, 883 (C.A. D.C.),

certiorari denied, 335 U.S. 854. The cases relied on by petitioner (Br. 43–44) are distinguishable. This is not a case in which it is unclear from the record on just what evidence the administrative findings are based (*National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U.S. 469, 479); nor one in which the administrative order would be sustainable if based on grounds which the record shows were not the actual grounds of decision (*Securities and Exchange Commission* v. *Chenery Corp.*, 318 U.S. 80, 94–95); nor one in which the reviewing court modified an administrative order (*Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17, 20–21).

II

THE REGISTRATION PROVISIONS OF THE SUBVERSIVE ACTIVITIES CONTROL ACT ARE CONSTITUTIONAL

Petitioner attacks the constitutionality of the registration provisions of the Subversive Activities Control Act on four grounds. It contends (1) that they interfere with freedom of assembly and speech protected by the First Amendment; (2) that they are unconstitutionally vague under the First Amendment and the due process clause of the Fifth Amendment; (3) that they violate the due process clause of the Fifth Amendment because they do not allow a Communist-front organization, like petitioner, to relitigate whether the organization which controls them, here the Communist Party, is actually a Communist-action organization, once the Board has determined the character of the latter organization; (4) that they

violate the self-incrimination clause of the Fifth Amendment. Petitioner also contends that the Board's reliance on evidence pre-dating the passage of the Act violates the due process clause of the Fifth Amendment and the *ex post facto* clause and that the disabilities imposed by the Act on Communist-front organizations and their members are unconstitutional.

The first four of these contentions are identical with those raised in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Act,* No. 44, this Term. As to them, therefore, we will rely on the extensive discussion in our brief in that case.

A. THE BOARD'S RELIANCE ON EVENTS PRE-DATING PASSAGE OF THE ACT DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OR THE *EX POST FACTO* CLAUSE

We have shown in our brief in the *American Committee* case that the Board could properly consider events antedating the passage of the Act. Petitioner contends (Br. 51–52) that such procedure violates the due process clause of the Fifth Amendment and the *ex post facto* clause because it bases registration on past acts.

1. This Court has held that "only the clearest proof could suffice to establish the unconstitutionality of a statute on" the ground that it is an *ex post facto* law. *Flemming* v. *Nestor,* 363 U.S 603, 617. An *ex post facto* law is a legislative act which "imposes a punishment for an act which was not punishable at the time it was committed, or a punishment in

addition to that then prescribed." *Burgess* v. *Salmon*, 97 U.S. 381, 384; accord, *Cummings* v. *Missouri*, 4 Wall. 277, 325–326; *Ex parte Garland*, 4 Wall. 333, 377; *Garner* v. *Los Angeles Labor Board*, 341 U.S. 716, 721. Thus, for a statute to constitute an *ex post facto* law, it is necessary that there be *punishment* and that the conduct punished be *past* conduct. Neither of these requirements is satisfied here.

First, the Act is not a penal statute. As this Court expressly held in the *Communist Party* case, 367 U.S. at 83–86, and Section 2 of the Act makes clear, the Act is a regulatory measure intended to accomplish the legitimate governmental purpose of checking the serious worldwide Communist danger insofar as it was furthered by organizations within the United States. And as we have shown in our brief in the *American Committee* case (pp. 120–131) and this Court held in the *Communist Party* case (367 U.S. at 93–105), the registration provisions in the Act are reasonably related to this objective.

Second, the Act has no retroactive effect; it applies only to organizations which at the time of the hearing are controlled by, and operate primarily to give aid and support to, Communist-action organizations. It is true that the Board may consider activities of the organization which occurred before the Act was passed. But, as the court below held (R. 220), such events merely constitute evidence relating to the character of the organization at the time of the hearing.

2. The same reasoning demonstrates that the due process clause of the Fifth Amendment is not vio-

lated. Regulatory statutes may constitutionally be applied to persons because of their conduct prior to the time the statute was passed. *E.g., Hawker* v. *New York,* 170 U.S. 189; *Garner* v. *Los Angeles Labor Board,* 341 U.S. 716. *A fortiori,* there is no question that petitioner may be regulated on the basis of its character after the Act was passed even though the determination is based in part on evidence of past activities.

B. DETERMINATION OF THE CONSTITUTIONALITY OF THE DISABILITIES ON PETITIONER AND ITS MEMBERS IS PREMATURE

Petitioner attacks (Br. 54–55) the constitutionality of the disabilities imposed on Communist-front organizations and their members on the same grounds as the Party argued in the *Communist Party* case. Our answers to this contention on the merits are set forth at length in the government's brief in *Communist Party* v. *Subversive Activities Control Board,* No. 12, Oct. Term 1960, pp. 170–212. Since these issues are plainly premature at this time, we rely on our earlier brief.

In the *Communist Party* case, this Court, on the basis of the same arguments which petitioner incorporates by reference here, held that determination of the constitutionality of the disabilities both on petitioner and on its members was premature. The Court stated (367 U.S. at 77):

> This Act, like the one involved there, has a section directing that if any of its provisions, or any of its applications, is held invalid, the remaining provisions and other possible applications shall not be affected. The authorita-

> tive legislative history clearly demonstrates that a major purpose of the enactment was to regulate Communist-action organizations by means of the public disclosure effected by registration, apart from the other regulatory provisions of the Act. Such is, of course, the very purpose of the severability clause. This being so, our consideration of any other provisions than those of § 7, requiring Communist-action organizations to register and file a registration statement, could in no way affect our decision in the present case. Were every portion of the Act purporting to regulate or prohibit the conduct of registered organizations (or organizations ordered to register) and of their members, as such, unconstitutional, we would still have to affirm the judgment below. Expatiation on the validity of those portions would remain mere pronouncements, addressed to future and hypothetical controversies.

This reasoning is fully applicable here. The disabilities concerning the Communist-front organizations bear the same relationship to the registration provisions as the disabilities relating to Communist-action organizations have to the registration provisions. Indeed, even the same sections of the Act are involved.

Moreover, the *Communist Party* case is consistent with numerous other, prior decisions of this Court. In *Watson* v. *Buck*, 313 U.S. 387, 402, this Court held with regard to a state copyright statute:

> Since all contingencies of attempted enforcement cannot be envisioned in advance of [a

> statute's] applications, courts have in the main found it wiser to delay passing upon the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured. Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case.

Similarly, in *Electric Bond & Share Co.* v. *Securities & Exchange Commission,* 303 U.S. 419, 443, the Court declined to pass on the "control" provisions of the Public Utility Holding Company Act since only the registration provisions were before the Court:

> By the cross bill, defendants seek a judgment that each and every provision of the Act is unconstitutional. It presents a variety of hypothetical controversies which may never become real. We are invited to enter into a speculative inquiry for the purpose of condemning statutory provisions the effect of which in concrete situations, not yet developed, cannot now be definitely perceived. We must decline that invitation.

Both these cases, like the *Communist Party* case and our position here, are grounded on the settled doctrine of this Court "never to anticipate a question of constitutional law in advance of the necessity of deciding it." *Liverpool, New York & Philadelphia S.S. Co.* v. *Commissioner,* 113 U.S. 33, 39.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 65

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

I. THE INSUFFICIENCY OF THE EVIDENCE.

A. As to Control.

In our main brief we pointed out at pp. 15-16 that Wolff and Fishman, the two principal officers of the petitioner who managed and directed its affairs from 1950 on were neither representatives nor functionaries

of the Party and that accordingly there was insufficient evidence to show that the petitioner was dominated and controlled by the Party, at least for the period since the passage of the Act, which is the only relevant period in question.

The government makes the following arguments in response:

a. That the court below found that petitioner's executive committee "had an important part in running petitioner" in the post-1950 period (Br. 65).[1] But the Board found on the basis of the undisputed evidence that the petitioner's affairs after 1950 were managed and directed solely by Wolff and Fishman (R. 107, 193). We do not think that the government can now justify the Board's order on the ground that findings made by the Board were erroneous.[2]

b. Secondly, the government asserts that the court below did not, "in fact, disagree" with the findings of the Board that Wolff and Fishman had been functionaries or representatives of the Party (Br. 62). In reply, we can only quote the opinion of the court below (R. 224): "The evidence does not show, so far as we can find, that Wolff or Fishman were functionaries

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[1] We treat in our main brief (pp. 16-17) with the erroneous nature of this finding of the court below.

[2] The government argues at length (Br. 52-55) that this Court should give deference to the findings of the Board and in any event should uphold those findings of the Board which were upheld by the court below. Despite this the government finds it necessary to ask the Court to reject findings made by the Board where they are helpful to petitioner and at the same time to uphold other findings made by the Board which were rejected b the court below.

within that definition[3] or that they held any official positions in the Party, or that they were picked by the Party."

c. Thirdly, according to the government (Br. 63) "any ruling by the court below that the Board's finding that Wolff and Fishman were functionaries was not supported by sufficient evidence would have been erroneous."[4] But the evidence which it recites in support of this contention amounts to nothing more than the fact that Wolff and Fishman were respectively National Commander and Executive Secretary of the petitioner and there was some evidence of their membership in the Party. Accordingly, argues the government, since the petitioner has been shown to have been Party controlled: "It could reasonably be inferred . . . that Wolff and Fishman were Party representatives when acting as officers of petitioner" (Br. 63-64). There are several fallacies in this reasoning. In the first place, there is nothing in the report to indicate that the Board shared this reasoning of the government.[5] It simply stated categorically without refer-

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[3] The definition referred to was that given by the government's witness Lautner, and one which the government here states is definitive as to the definition of "functionary" (Br. 71). Contrary to the government's contention, it does not appear from the Report of the Board that it employed that definition of "functionary," or that it employed any definition.

[4] As we have already noted, footnote 2, *supra*, although the government elaborately urges this Court not to review the record after it has been reviewed by the court below, the above is one of the numerous instances in which the government asks this Court to reject the findings of the court below.

[5] "The court may not accept appellate counsel's post hoc rationalizations for agency action." *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 168.

ence to any evidence that Wolff was "established" as a Party functionary (R. 102) and Fishman was "identified" as a Party functionary (R. 108). Secondly, the reasoning is circular. On the one hand, the government asks the Court to find that petitioner was controlled and dominated by the Party because petitioner's principal officers were Party representatives. Then, it asks the Court to find that they were Party representatives because they were the principal officers of a Party-controlled organization. The substantial evidence rule clearly requires something more than this kind of flim-flam.

Further, the government misstates the evidence as to the period of the alleged membership of both Wolff and Fishman. The latest evidence that Wolff may have been a member of the Party was Budenz' testimony that Wolff attended a Communist Party meeting in 1941 (Tr. 2703, 2753-4). The sole evidence that Fishman had ever been a party member consisted of the testimony of one Huber that Fishman had admitted such membership to him (Tr. 1944-5, 2002-7). Huber could not recall when this occurred, and testified that it could have occurred any time between 1940 and 1947. Huber's faulty memory would be justification for disregarding his testimony entirely, but it cannot justify the government's contention that Fishman was a member from 1940 to 1941 and 1947. At most Huber's testimony might support a finding that Fishman was a Party member in 1940. Accordingly, there is no justification for the government's statement that the evidence shows that Wolff and Fishman were Party members as late as 1949 and 1947 respectively (Br. 60, 63-64). Nor is there any basis for the government to urge that the Court should give deference to the Board's

findings on this point. For the Board made no findings as to the period of the alleged membership of either Wolff or Fishman.[6]

d. Finally, the government argues (Br. 57-62) that even if it be conceded that the affairs of the petitioner during the post-1950 period were run by two officers who were neither functionaries nor representatives of the Party, that factor is not decisive and it was permissible nevertheless to find control on the basis of other evidence.[7]

There are several reasons why this position of the government is unsound.

In the first place, it appears from the Board's Report (R. 109), that its finding that Wolff and Fishman were functionaries of the Party was, if not decisive to its conclusion of control, at a minimum, a key element in that conclusion. Under standard principles of administrative law, once a key finding of the Board was re-

[6] The Board's Report, as a whole, shows virtually no recognition of the time element as a factor in its findings concerning Party membership. And as we show in our main brief (p. 17), despite its recognition that it was erroneous to disregard the element of time, the court below committed the same error.

[7] The court below seems to have adopted both points of view even though they are contradictory. On the one hand it stated (R. 222): "So the inquiries in this case upon the first half of the statutory definition are (1) whether persons active in the management, direction or supervision of the Brigade in 1950 or thereafter were authorized to do so by the Party; and (2) whether these persons were the dominant or key voices in the management of the Brigade." However, after finding that the dominant or key voices in the management of the Brigade as found by the Board, were not functionaries or representatives of the Party, it then went on to state (R. 226) that the Board could take into consideration all four statutory criteria "in determining the applicability of the whole of the statutory definition."

jected, it was not appropriate for the reviewing court to supply its own rationale to justify the Board's ultimate conclusion. *S.E.C.* v. *Chenery Corp.*, 318 U.S. 80; *Burlington Truck Lines* v. *United States, supra*. Yet this is essentially what the court below did. The government's suggestion (Br. 93), that the court's rejection of this key finding of the Board, (i.e., that the only two active officers of the petitioner in the post-1950 period were either functionaries or representatives of the Party) is only a "minor difference" which may be ignored is patently frivolous.

Secondly, once the element of personnel as a method of control is eliminated, there is nothing left in this record to support a finding of control for the post-1950 period. There is no evidence and no findings by the Board which can possibly support a conclusion of control after the Act. And neither the government nor the court below points to anything significant in this respect. All we were told by the court below was that the Board was justified in arriving at such a conclusion "upon the record as a whole" (R. 229).[8] And the government repeats this view in several places (e.g., "all the evidence must be considered" (Br. 58) "the evidence, taken as a whole" (Br. 59), "all the evidence" (Br. 61). Indeed, it is impossible to tell either from the report of the Board, the opinion of the court below, or the government's brief exactly what their conclusion of control is based upon.

The statement that the Board was justified in finding control on the basis of "all the evidence," or "the record, taken as a whole" is not a rationale for the legal

[8] We show in our main brief (pp. 15-17) that the only specific item relied on by the court below, the 1952 letter, cannot possibly support a conclusion of control.

conclusion of control. Nor does deference to the alleged expertise of the Board require the Court to sustain the Board's ultimate conclusion solely on the ground that it is supported by the "record as a whole." As stated in *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 167, the Court will not "accept such adjudicatory practice. . . . Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding; *expertise*,[9] the strength of modern government, can become a monster which rules with no practical limits on its discretion.' "

To urge, as the government does, that the Court should sustain the Board's finding of control because such finding is supported by the "whole record" or by "the evidence as a whole" is in effect to argue that petitioner is not entitled to judicial review. Obviously it is incumbent upon the government to show here that the findings made by the Board and which are supported by evidence led the Board by some rational route to the conclusion that the petitioner was controlled by

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[9] It should be noted that a good part of the Board's alleged "expertise" is directed to a discussion of the character of the Spanish Civil War (R. 1-73, 87-93), and its ultimate finding as well as that of the court below was in large part based on the view that that war was a struggle between Communism and Fascism. We submit that whatever field the Board may be expert in, it is no expert in history. Nor was it privileged to write the history of the Spanish Civil War solely on the basis of the testimony of ex-communists such as Louis Budenz and John Lautner, neither of whom were ever in Spain. Significantly, the government in its statement (Br. 8) makes much of the Board's finding, based on the boastful assertions of the Communist Party that the "overwhelming majority" of the Americans who fought in Spain were Communists. The New York Times, on the other hand, in a contemporaneous account, put the number of Communists in the American forces at about a quarter of the total (Pet. Exh. 56).

the Communist Party. In the absence of such showing, and there is none, the Board order cannot stand.

Moreover, the invalidity of the governments reliance on "the record as a whole" as proof of control is emphasized by the vagueness and inaccuracy of the few specific references it makes to that record. Thus, as we have shown, it is incorrect to say that there was evidence that Wolff and Fishman were Party members as late as 1949 and 1947 (Br. 60). The government adds, as persuasive of control, that there was "no indication of any change in their activities thereafter." (Br. 60) But if neither had any activities prior to 1950 to show that they were functionaries or representatives of the Party, no significance can be attached to the fact that they had no such activities after that date.

The same defect appears in the lower court's summary of evidence which it offers as sustaining the Board's conclusion of control. The crucial portion quoted by the government (Br. 60-61) contains only the vaguest generalities plus one crucial misstatement of fact. According to the court, petitioner had the same officers in 1950-1954 as it had prior to 1950. In fact, of the two officers, only one, Wolff, had been in office prior to 1950. Fishman, who as the Board found (R. 106) and the record shows (Tr. 3541-2, 4335-8, 4408), was the controlling, managing individual in the affairs of the petitioner after 1950, had not been an officer of the petitioner prior to that date.

B. As to Aid and Support.

In our main brief (pp. 20-21) we set out all of the post-1950 activities of the petitioner and we argued that it was impossible to conclude, on the basis of those activities, that the petitioner, during this critical period, gave aid and support to the Party. The govern-

ment does not dispute the accuracy of our statement of the facts. It argues only (Br. 68) that if "petitioner operated before 1950 primarily to give aid and support to the Communist Party, all that the evidence concerning events after 1950 need show is that petitioner's character did not substantially change."[10]

But on the government's own statement, petitioner's character did substantially change after 1950. Without conceding the accuracy of the government's recital of the petitioner's pre-1950 activities, it is significant to note the items upon which the government relies as showing that the petitioner aided and supported the Party during that period. According to the government (Br. 67) prior to 1950 the petitioner (1) acted as a reservoir of trained Party members, (2) immediately conformed its policies to reversals in those of the Communist Party, (3) worked in coordination with other Communist mass organizations, (4) acted as a joint sponsor of a Party crusade, (5) worked to increase *Daily Worker* subscriptions, (6) took part in Party picket lines and parades, (7) took part in fund raising events and other Party functions.

But petitioner after 1950 did none of these things. Obviously, if petitioner, after 1950, did none of the

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[10] The government took essentially the same position on the issue of Party support to the petitioner. We showed in our main brief (p. 26) that the sole evidence of Party support of the petitioner after 1950 consisted of three items of publicity in the Daily Worker. The government does not dispute this. Instead it argues (Br. 75) that the existence of Party support for petitioner prior to 1950 "goes a long way toward establishing the continuance" of support after 1950. Further, there is no merit in the government's novel argument (Br. 74) that the absence of financial support from the Party serves only to prove that an organization is a successful "Communist front." We prefer the more rational, albeit commonplace view, undoubtedly shared by Congress, that an organization is controlled by those who hold the purse strings.

things which the government says it did prior to 1950 and which formed the basis for its conclusion that it aided and supported the Party, then its character must have substantially changed.

II. THE MEANING OF AID AND SUPPORT.

We argued in our main brief (Br. 20-21, 30-32, 49-51), that the proper construction of the second half of the statutory definition requires a showing that the organization gives aid and support to the objectives of the Communist-action organization as defined in Sec. 2 of the Act. The government's reply to that contention is contained in its brief in the companion American Committee case, No. 44 at pp. 71-82. In essence, its position is that the aid and support portion of the definition can be satisfied merely by showing that the organization took a policy position on some public issue similar to that espoused by the Communist Party. In other words, if the Communist Party opposed the Internal Security Act, any organization that also opposed the Internal Security Act gives aid and support to the Party. Similarly, since both the Communist Party and the petitioner opposed the Franco regime, the petitioner thereby gave aid and support to the Communist Party.[11] According to the government this

[11] According to the majority below (R. 228) such a similarity of views does not constitute aid and support to the Party, if the views are espoused "as a matter of independent conviction," but does constitute aid and support if done for that "purpose." This, the Court added, was a "question of fact" to be resolved by the evidence. Although we challenged that interpretation of the statute, we argued in addition (Br. 19, 32) that there was no evidence in the record, and no Board findings that these post-statutory activities were taken for the forbidden purpose and not "as a matter of independent conviction." The government in reply, points to no evidence that can justify an adverse finding against petitioner under this test. It states only (Br. 82) that the "Board answered the court's question . . . by its ultimate finding."

follows from the nature of Communist-fronts. In a thesis which it elaborately develops in Appendix B of its Brief filed in the American Committee case, the government argues that the Communist Party employs Communist-fronts which promote only innocent objectives in order to promote the ultimate evil and illicit objectives of the Communist Party and of the world Communist movement, i.e., overthrow of the government by force and establishment of a totalitarian dictatorship. But if this reasoning is to have any validity as applied in these cases, the alleged Communist-fronts must do something more than merely promote the innocent objectives. For example, if, according to the government, the Communist Party used the petitioner as a vehicle to utilize legitimate anti-Fascist sentiments in order to promote the ultimate illicit objectives of the Communist Party, then it does not make out a case by merely showing that the petitioner opposed Franco. There must be some evidence to show how the non-communist support of non-communist objectives, e.g., anti-fascism and opposition to Franco, leads to the support and achievement of alleged communist objectives, e.g., the overthrow of the government and the establishment of a totalitarian dictatorship subservient to the Soviet Union.

The issue in the present cases is not how communist-fronts operate generally, but whether petitioners are such organizations. And since there is concededly no evidence that petitioners espoused the evil objectives attributed to the Party or caused non-communists to do so, then the government's elaborate argument that the communist-fronts encompassed by the Act operate in that fashion, only serves to prove that the petitioners are not such organizations.

Implicit in the government's argument is the premise that petitioners must necessarily have advanced the

sinister objectives described in Section 2 of the Act because they are Communist fronts. But this only begs the question. What was required to be proved in these cases was that petitioners were Communist-fronts as defined in the Act. The government's own description of Communist-fronts shows that this could be done only by evidence, totally lacking in these cases, that petitioners were operated to promote those sinister objectives. The essential gap in the evidence cannot be supplied by the government's theorizing on the nature of Communist-fronts generally.[12]

The invalidity of the government's interpretation of "aid and support" is highlighted when one turns to the government's argument in support of the constitutionality of this section of the Act. Here we find no argument that the Board may constitutionally proscribe organizations because they agree with the Communist Party in opposing Franco, or defend Communists or alleged Communists in deportation proceedings. On the contrary, we are told that the Act is constitutional because it is aimed at the evil which is "nothing less than the threatened destruction, through force, violence, and deceit, of our constitutional form of government, the loss of our national independence and of our cherished liberties and the passing of the nation

[12] In Appendix C of its brief in the American Committee case, the Board lists, with a brief description, all of the organizations which were found to be Communist-fronts by the Board. With the exception of the two petitioners currently before this Court, and the National Council of American-Soviet Friendship, all of these organizations were destroyed by the proceedings before the Board and accordingly went out of existence before they were able to obtain judicial review. As the government correctly notes (Br. 227), the Board's finding in the National Council case was reversed by the Court of Appeals for insufficiency of the evidence. *National Council of American-Soviet Friendship* v. *Subversive Activities Control Board*, 322 F. 2d 375.

under the domination of a ruthless foreign dictatorship" (American Committee case, Br. 121). And later (*id* at 126), the government tells us that the provision of the Act relating to communist-fronts can be constitutionally sustained because "they [Communist-fronts] are indirectly, but plainly, under the control, and carry out the purposes of the world Communist movement just as much as Communist-action organizations." And at p. 130 of the same brief we are told that "While such organizations' activities may be peaceful and not in violation of any criminal law at a particular time, Congress has the constitutional power to require disclosure from such organizations which are actively working for overthrow of the Government."

The government cannot have it both ways. If the constitutionality of the Act is to be sustained on the ground that it is directed only against organizations which are "actively working for overthrow of the government," then the government must prove in each case in which it argues that the Act applies, that the organization branded as a Communist-front is "actively working for overthrow of the government." Admittedly, there is no such evidence in either of the present cases before the Board.

Respectfully submitted,

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